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1037
No. 2839

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

W. H. WOOLDRIDGE,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME I.
(Pages 1 to 352, Inclusive.)

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

Filed

SEP 23 1916

F. D. Moulton,
Filer Bros. Co. Print, 330 Jackson St., S. F., Cal.
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

R. F. ROTH, Fairbanks, Alaska.

Attorney for Plaintiff and Defendant in
Error.

BION A. DODGE, Fairbanks, Alaska.

Attorney for Defendant and Plaintiff in
Error.

T. A. MARQUAM, Fairbanks, Alaska,

Attorney for Defendant and Plaintiff in
Error. [1*]

*United States Circuit Court of Appeals for the Ninth
Circuit.*

W. H. WOOLDRIDGE,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Stipulation.

It is hereby stipulated and consented by and between the attorneys for the parties to the above-entitled cause, that in the printed record of said cause, that after the title has been once printed, the title and caption of all succeeding papers in said printed record be omitted, and the word "Title" substituted therefor; and also after the endorsements and file-marks on the indictment, bill of exceptions and record in said cause has been once printed, the endorsements and unnecessary file-marks on all other

*Page-number appearing at foot of page of original certified Record.

papers in said bill of exceptions and record be omitted, and the word "Indorsements" substituted therefor.

Dated, June 24, 1916.

R. F. ROTH,
United States District Attorney for Fourth Division,
Territory of Alaska, Attorney for Defendant in
Error.

BION A. DODGE,
T. A. MARQUAM,
Attorneys for Plaintiff in Error.

[Endorsed]: No. 2839. In the United States Circuit Court of Appeals for the Ninth Circuit. W. H. Wooldridge, Plaintiff in Error, vs. United States of America, Defendant in Error. Stipulation. Filed Sep. 1, 1916. F. D. Monckton, Clerk.

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 708—CR.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W. H. WOOLDRIDGE,

Defendant.

Praecipt for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, under the ap-

peal heretofore perfected to said Court, and include in said transcript the following pleadings, proceedings, and papers on file in your office, to wit:

1. Indictment;
2. Arraignment (Journal);
3. Plea (do);
4. Bill of Exceptions complete, including instructions and proposed instructions;
5. Verdict;
6. Motion for New Trial;
7. Motion in Arrest of Judgment;
8. Orders denying each of last above;
9. Order extending time to prepare, present and settle Bill of Exceptions;
10. Judgment and Sentence;
11. Petition for Writ of Error and Supersedeas and allowance;
12. Assignment of Errors;
13. Order Allowing Writ of Error and Fixing Amount of Bond;
14. Bond;
15. Order to U. S. Marshal;
16. Writ of Error;
17. Citation; [2]
18. Order enlarging and extending time of return of Writ of Error and to file transcript of record;
19. All journal entries and orders.
20. Praecipe.

Said transcript to be prepared as required by law and the rules of this court and the United States Circuit Court of Appeals for the Ninth Circuit, and

to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on or before the first day of September, 1916, pursuant to the order of this court enlarging and extending said time.

Dated this 27th day of May, 1916, at Fairbanks, Alaska.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant.

[Endorsed]: No. 708—Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Praecipe. Filed in the District Court, Territory of Alaska, 4th Div. May 27, 1916. J. E. Clark, Clerk. By L. F. Protzman, Deputy. [3]

[Title.]

Indictment.

COUNT I.

W. H. WOOLDRIDGE is accused by the Grand Jury of the Territory of Alaska, Fourth Judicial Division, convened at Fairbanks for the regular February, 1916, Term of the District Court by this indictment of the crime of rape, committed as follows, to wit:

That the said W. H. Wooldridge, on the twenty-third day of December, one thousand nine hundred and fourteen, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this court, did then and

there wilfully, unlawfully and feloniously carnally know and abuse one Laura Herington, a female child then under the age of sixteen years, to wit, of the age of thirteen years, he, the said W. H. Wooldridge then and there being a male person over the age of twenty-one years, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II.

W. H. WOOLDRIDGE is further accused by the Grand Jury for the Territory of Alaska, Fourth Judicial Division, convened at Fairbanks for the regular February, 1916, term of the District Court by this indictment of the crime of attempt to commit rape, committed as follows, to wit:

That the said W. H. Wooldridge, then and there being a male person over the age of twenty-one years, on the fourteenth day of February, one thousand nine hundred and sixteen, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this court, did then and there, wilfully, unlawfully and feloniously, attempt to unlawfully and feloniously [4] carnally know and abuse one Laura Herington, she being then and there a female person under the age of sixteen years, to wit, of the age of fourteen years, by then and there procuring said Laura Herington to consent to meet him, the said W. H. Wooldridge, at that certain place in Fairbanks known as J. P. Rose's Repair Shop situate on Lacey Street, between First and Second Avenues, for the purpose of

having unlawful and felonious sexual intercourse with him the said W. H. Wooldridge, and by meeting the said Laura Herington at said shop on said day, pursuant to said arrangement, with the unlawful and felonious intent to then and there carry out said arrangement and to carnally know and abuse said Laura Herington, but the said W. H. Wooldridge was prevented and intercepted in the perpetration of said crime.

That the acts done by him, the said W. H. Wooldridge, tended to but failed to effect the commission of the crime of rape, and that by reason thereof the said W. H. Wooldridge did wilfully, unlawfully and feloniously commit the crime of an attempt to commit the crime of rape, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Fairbanks in the Division and Territory aforesaid this 18th day of February, 1916.

R. F. ROTH,
United States Attorney.

A True Bill.

J. P. NORRIS,
Foreman.

The following are the names of the witnesses examined before the Grand Jury on the finding of the foregoing indictment:

George Herington,	J. P. Rose,
Mrs. Geo. Herington,	Ed Hall,
Laura Herington,	J. H. Miller.

[Endorsed]: No. 708—Cr. District Court, Ter. of Alaska, Fourth Division. The United States of America vs. W. H. Wooldridge. Indictment. Count I, Crime of Rape. Count II, Crime of Attempt to Commit Rape. A True Bill. J. P. Norris, Foreman Grand Jury. Secret. Without Bail. Charles E. Bunnell, District Judge.

Presented to the Court by the foreman of the Grand Jury in open court in the presence of the Grand Jury, and filed in the District Court, Territory of Alaska, Fourth Division, Fairbanks, Alaska. Feby. 19, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [5]

[Title.]

Minutes of Court—February 19, 1916.

Order for Bench Warrant.

The United States Grand Jury having, on this 19th day of February, 1916, returned an indictment against the defendant herein for the crime charged therein, now, on application of R. F. Roth, United States Attorney made in open court,

IT IS ORDERED that the clerk of the court may issue a bench warrant directed to the United States Marshal for the defendant named in said secret indictment, said defendant not to be admitted to bail.

CHARLES E. BUNNELL,

District Judge. [6]

[Title.]

Minutes of Court—February 19, 1916.

Order Assigning Counsel.

Now, at this time, came R. F. Roth, United States Attorney for and in behalf of the Government; came also the defendant herein in the custody of the United States Marshal, and it appearing to the Court that the defendant herein is not represented by counsel, now, for the purpose of arraignment only,

IT IS ORDERED that B. A. Dodge be, and he hereby is, appointed as attorney for the defendant herein.

CHARLES E. BUNNELL,

District Judge. [7]

[Title.]

Minutes of Court—February 19, 1916.

Arraignment.

Now, at this time, came R. F. Roth, United States Attorney, for and in behalf of the Government; came also the United States Marshal, returning the defendant on bench warrant heretofore issued and with defendant's attorney, B. A. Dodge, and the said defendant being brought to the bar of the court and being asked if he is indicted by his true name, and answering that he is, the said indictment was read to the defendant and a copy thereof delivered to him and the defendant asking time in which to plead or otherwise move against said indictment, the

time therefor was fixed by the Court for 10 o'clock A. M., Wednesday, February 23d, 1916, whereupon, defendant was remanded to the custody of the United States Marshal.

CHARLES E. BUNNELL,
District Judge. [8]

[Title.]

Minutes of Court—February 23, 1916.

Plea.

Now, at this time came Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, for and in behalf of the Government; came also the defendant herein, in the custody of the United States Marshal and with his attorney B. A. Dodge, and the defendant, having on a prior day of this term been duly arraigned, was asked by the Court if he is guilty or not guilty of the crime charged against him in the indictment, namely, first count, rape, second count, attempt to commit rape, to each of which counts, defendant says that he is not guilty, and therefore puts himself upon the country and the United States attorney for and in behalf of the Government doth the same.

CHARLES E. BUNNELL,
District Judge. [9]

[Title.]

Minutes of Court—February 24, 1916.

Order Setting Cause for Trial.

Now, at this time, R. F. Roth, United States At-

torney, Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys, appearing for and in behalf of the Government; came also the defendant in person and in the custody of the United States Marshal and with his attorney B. A. Dodge, and

It is ordered that this cause be, and the same is, hereby set for trial at 10 o'clock A. M., Wednesday, March 1st, 1916.

CHARLES E. BUNNELL,
District Judge. [10]

[Title.]

Minutes of Court—March 1, 1916.

Order Resetting Cause for Trial.

This cause having previously been set for trial on March 1st, 1916.

It is ordered that the same be hereby reset and continued to follow trial of cause No. 714—Cr.

CHARLES E. BUNNELL,
District Judge. [11]

[Title.]

Minutes of Court—March 6, 1916.

Order Entering Associate Counsel.

Now, at this time, R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney appearing in behalf of the Government, and Bion A. Dodge appearing in behalf of the defendant, upon motion of counsel for the defendant, and there being no objections,

It is ordered that T. A. Marquam be, and he hereby is, entered as associate counsel for defendant herein.

CHARLES E. BUNNELL,

District Judge. [12]

[Title.]

Minutes of Court—March 6, 1916—Trial.

Trial by Jury.

Now, at this time, R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, appearing in behalf of plaintiff; came also the defendant herein in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam, and this cause having previously been set for trial at this time and now both parties announcing their readiness for trial, the following proceedings were had, to wit:

On the Court's own motion, and there being no objections on the part of the prosecution or defense, the Court ordered that all persons of the general public not properly having business before the Court be excluded from the courtroom during the trial of this cause.

Thereupon, the clerk of the court proceeded to draw from the trial jury-box, one at a time, the names of the members of the regular panel of petit jurors and the respective attorneys proceeded to examine and exercise their challenges against the jurors so drawn.

And it appearing to the Court that during the formation of the jury in this cause and the pendency of the trial said jury should be kept together in charge

of sworn bailiffs, S. T. Kincaid and R. K. Latimer were each duly sworn as bailiffs in charge of said jury.

Hereupon, the jury having been duly admonished by the Court were excused in charge of their sworn bailiffs to report at 2 o'clock P. M.

CHARLES E. BUNNELL,

District Judge. [13]

[Title.]

**Order to Supply Jurymen and Bailiffs With Meals
and Lodgings.**

Now, on this day, to wit, March 6th, 1916, it appearing to the Court that it is necessary that the jury, now in process of formation or having under consideration the law and the evidence as given to them on the trial of the above-mentioned cause, should be kept together and free from communication or association with other persons and in constant charge of two officers of the court, duly sworn;

IT IS NOW THEREFORE ORDERED that the said jury be assigned to the custody of two duly sworn bailiffs, and that the U. S. Marshal for this Division and Territory provide the said jury and bailiffs with meals and lodgings at the expense of the United States, until such time as the jurymen have agreed upon their verdict or have been discharged by the Court.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 439.

[Endorsed]: No. 708—Cr. In the District Court for the Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant. Order to Furnish Jurymen and Bailiffs with Meals and Lodgings. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 6, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [14]

[Title.]

Minutes of Court—March 16, 1916—Trial.

Trial Continued.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his counsel Bion A. Dodge and T. A. Marquam; came likewise the members of the regular panel of petit jurors and being called and each answering to his name, said trial was resumed and the following proceedings were had, to wit:

Counsel for the respective parties herein continued to examine said jurors previously drawn and exercise their challenges according to law.

At 3:37 o'clock P. M., after being duly admonished by the Court, the jury retired in charge of their sworn bailiffs, and Court declared a recess until 3:50 P. M.

3:50 P. M.

Thereafter, at 3:50 P. M., came the jury heretofore drawn in this cause in charge of their sworn bailiffs;

came also the defendant in the custody of the United States Marshal and the respective attorneys and respective parties herein, and said trial was resumed:

Respective counsel continued to examine said jurors and exercise their challenges as heretofore.

At 5:30 o'clock P. M., after being duly admonished by the [15] Court, the jury retired in charge of their sworn bailiffs, to report at 10 o'clock A. M., tomorrow, Tuesday, March 7th, 1916. The members of the regular panel of petit jurors not yet drawn in said cause were excused to report at 10 o'clock A. M., Tuesday, March 7th, 1916; members excused for cause to report at 10 o'clock A. M., Wednesday, March 8th, 1916.

CHARLES E. BUNNELL,

District Judge. [16]

[Title.]

Minutes of Court—March 7, 1916—Trial.

Trial Continued.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant, in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came also the members of the regular panel of petit jurors excepting those previously excused for cause in this case, and the following proceedings were had, to wit:

Respective counsel continued to examine the members of the regular panel of petit jurors and exercise their challenges according to law.

Noon hour having arrived the members of the petit jury in the box were duly admonished by the Court and excused in charge of their sworn bailiffs to report at 2 o'clock P. M. Others of the regular panel of petit jurors not yet drawn were excused to report at 2 o'clock P. M.

2 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant herein in the custody of the United States Marshal and with his counsel Bion A. Dodge and T. A. Marquam; came also the members of the regular panel of petit jurors not previously excused for cause and being called and each answering to his name, the following proceedings were had, to wit: [17]

Respective counsel continued to examine said jurors and exercise their challenges according to law.

At 3:20 o'clock P. M. the jury retired in charge of their sworn bailiffs, and it appearing that the regular panel of petit jurors will become exhausted, counsel for defendant presented a motion to the Court supported by the affidavits of W. H. Wooldridge, defendant herein, and R. R. Douse, asking for the appointment of a special officer to serve the special venire herein, and after argument by counsel and W. H. Wooldridge, M. O. Carlson and L. T. Erwin each being duly sworn and testifying herein, and the Court having considered said motion and the matters presented therein, and being fully advised in the premises,

It is ordered that said motion of defendant's be

and the same is hereby denied.

At 4 o'clock P. M., Court declared recess until 4:15 o'clock P. M.

4:15 P. M.

Thereafter, at 4:15 P. M., came the members of the regular panel of petit jurors and it was stipulated by respective counsel that all were present; came also the defendant in the custody of the United States Marshal and the respective attorneys and parties herein and said trial was resumed.

Counsel for the respective parties herein continued to examine the jurors heretofore drawn and exercise their challenges according to law until the jury was complete, and consisted of the following persons:

Robert Moore,	Charles McDermott,
G. E. Beraud,	L. J. Heacock,
John Solen,	George Bellows,
E. H. Boyer,	S. R. Bredlie,
Perry Willoughby,	Ezra Buffington,
E. J. Stier,	M. Rosenthal,

which said jurors were duly sworn to try the issues in said cause.

Hereupon, the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 10 o'clock A. M. Wednesday, March 8th, 1916.

CHARLES E. BUNNELL,

District Judge. [18]

[Title.]

**Motion for Appointment of Uninterested Party to
Serve Special Venire, etc.**

The defendant moves that this Court, for the purpose of the selection of unbiased and unprejudiced and impartial jurors, specially appoint an uninterested and indifferent person for the purpose of serving any special venire which may be issued by this Court in the above-entitled case, for the purpose of serving and selecting impartial, unprejudiced and unbiased jurors and to return the same into this court in accordance with the provisions of law.

This motion is based upon the affidavit of the said defendant and upon the affidavit of R. R. Douse presented herewith.

Dated at Fairbanks, Alaska, this 7th day of March, 1916.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 7, 1916. J. E. Clark, Clerk.
By Sidney Stewart, Deputy. [19]

[Title.]

**Affidavit of W. H. Wooldridge, in Support of Motion
for Appointment of Uninterested Party to Serve
Special Venire, etc.**

United States of America,
Territory of Alaska,
Fourth Division,—ss.

W. H. Wooldridge, being first duly sworn, on oath, deposes and says:—That he is the person mentioned and named in a certain indictment herein, in the above-entitled court, number 708, charged with the offence and offences therein named; that he has been a resident of the Town of Fairbanks, in said Division in said Territory for the last past 13 years; that he is well acquainted with one L. T. Erwin, who is now and for the last three years, has been acting as United States Marshal for said Fourth Judicial Division; that he is also acquainted with the deputies acting under the said L. T. Erwin, namely: M. O. Carlson, William McMullen, J. E. Miller and one Frank Miller, one George Berg, one Frank B. Hall and one J. C. Wood; that he is also acquainted with one Rinehart F. Roth, who is, at the present time, and for more than a year last past, occupies and has occupied a position of United States District Attorney for said Division.

Affiant further says that sometime during the month of May, 1913, he was duly commissioned and acting as notary public in and for the said Territory of Alaska, and, as such notary public, he affixed his

jurat to the oath of one Mrs. P. S. Kieth to a certain affidavit, made and subscribed to by the said Mrs. P. S. Kieth, in which the name of the said United States Marshal, L. T. Erwin, was prominently mentioned, which affidavit and a copy thereof is in the possession of this affiant and can be made a part hereof or produced to this Court if so requested; and the contents of which affidavit [20] are well known to the said United States Marshal, L. T. Erwin; that during the month of January, 1916, this affiant still being commissioned and acting as such notary public affixed his jurat to an affidavit subscribed by one Lou Howard in which affidavit the name of said Rhinehart F. Roth, was prominently mentioned, the contents of which are well known to said Roth and the original or a copy of which is in the possession of this affiant.

Affiant further says that he has reason to believe, and does fairly believe, that this affiant has incurred the criticism and censure and hostility and bitter enmity of the said L. T. Erwin, the said United States Marshal, because of this affiant acting in the said capacity of a notary public aforesaid and otherwise, and the said United States Marshal, L. T. Erwin is, by reason thereof, interested in the prosecution of this case and is desirous that this affiant be convicted of the charge and charges mentioned in said indictment, irrespective of his guilt or innocence thereof; and the said deputies and each and every one thereof is likewise interested in the prosecution of this affiant because of sympathy for the said L. T. Erwin, their employer; and otherwise this affiant has incurred their criticism and censure and hostility and

open enmity and they have sought individually and collectively to involve this affiant in a position of a series of circumstances which were intended to make it appear that this affiant had or was about to incriminate himself, and used their power, by virtue of their respective official positions, and their every individual efforts to that end and purpose, and further that they created and attempted to create the said conditions and brought about many of the surrounding circumstances concerning one of said alleged offences that which this accused is charged, and that owing to said criticism and censure and hostility and open enmity, this affiant has reason to believe and does verily believe that the said present United States Marshal L. T. Erwin and his said deputies and each and every one thereof will look lightly [21] upon a spectacle of a jury packed for the express purpose of prosecuting the accused, this affiant, irrespective of whether or not the said United States Marshal or the said deputies believe him guilty or innocent, and that because of such hostility and open enmity, the said United States Marshal, L. T. Erwin, and the said deputies and each and every one thereof, do not understand and they do not appreciate the value of the legal protection to an accused person as guaranteed by our system of laws.

And this affiant further says that in the event the regular panel of jurors of this term of this court should be exhausted from challenges for cause of peremptory challenges, or be excused for any reason by the Court, and it should become necessary for a special venire to issue out of this court to the said

United States marshal, or any one of his deputies, for service and return for the purpose of procuring sufficient jurors to complete the jury in this case, that this affiant, the person so accused of said alleged offence in said indictment in view of the circumstances surrounding the said alleged offence with which this accused is so charged as aforesaid, would not have a remnant left of that protection which is afforded by a fair trial before an impartial jury.

This affiant alleges that neither the said L. T. Erwin, United States marshal, or his said deputies are uninterested or indifferent as to the outcome of this case and are not fit or proper persons or officials to serve a special venire in this case.

Therefore this affiant respectfully requests that this Court for the purpose aforesaid, shall especially appoint a fit person for the purpose of serving any special venire which this court shall issue and shall administer to him the necessary oath that he will well and truly and impartially serve and return such special writs of venire in accordance with the provisions of law.

W. H. WOOLDRIDGE,

Subscribed and sworn to before me this 7th day of March, 1916.

[Seal]

J. E. CLARK,

Clerk District Court, for the District of Alaska,
Fourth Division.

By Sidney Stewart,
Deputy Clerk of the Court.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 7, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [22]

Affidavit of R. R. Douse, in Support of Motion for Appointment of Uninterested Party to Serve Special Venire, etc.

United States of America,
Territory of Alaska,—ss.

R. R. Douse, being first duly sworn, on oath deposes and says: That he is a citizen of the United States, twenty-six years of age and a resident of Fairbanks, Alaska; that he is a brother of F. A. Douse who is a resident of the Town of Fairbanks, Alaska; that upon the 29th day of February, 1916, in the afternoon of said day, said F. A. Douse came to the office where affiant is employed as a stenographer, in the Barnett Building, and made the following statement to affiant in substantially the following language, to wit: "I have been down to see Erwin (referring to United States Marshal, L. T. Erwin) to straighten up some books and accounts and expenses of the trip over the trail from Chitina to Fairbanks (wherein the said F. A. Douse had charge of a freighting outfit of the said Erwin). The said Erwin owes me some money for the trip coming in over the trail. He lost money on that trip so I am not going to ask him for it because it is only a few dollars, and it is not worth getting in bad with him for. Erwin is going to give me a job about Friday. He told me he would 'phone up to the house when a special venire was issued. As long

as I am not doing anything I might as well have the money. Erwin told me I could go outside with him as a guard when he took the prisoners out.” At the time the said F. D. Douse did not tell affiant in what case he expected to be summoned as a special venireman; but upon the 4th day of March, 1916, about four o’clock in the afternoon of said day said F. A. Douse, on Cushman Street near the federal jail in the said town of Fairbanks, made the following statement to affiant in substantially the following form: “I was just talking to Erwin and he told me to be around on Monday that a special venire would be called in the Wooldridge [23] case and that I would get on”; and the said F. A. Douse further told affiant “that he would be around where he would be found.” Affiant then said to the said F. A. Douse “How can you possibly be a fair juror in the Wooldridge case? You know that Erwin and Wooldridge are bitter enemies. You have been employed by Erwin and he owes you money, and you expect to go out as a guard with the prisoners with him.” Under these circumstances affiant told the said F. A. Douse that he had no business to sit as a juror in the Wooldridge case; and further told him if he was subpoenaed in the manner in which he expected to be, that affiant would inform Bion A. Dodge (Wooldridge’s attorney) of the fact: That said F. A. Douse then said to affiant: “Don’t you do it, I have always been a good brother to you. What did Wooldridge ever do for you that it makes any difference to you who sits on his jury.” At that the conversation ended, and the said F. A. Douse left affiant

apparently under the impression that he would acquiesce in his request to say nothing about it; and affiant believes that the said F. A. Douse will be subpoenaed in the manner above indicated.

Affiant has prepared and subscribed the foregoing affidavit for the sole purpose of aiding in preventing the jury being unfairly and illegally summoned.

R. R. DOUSE.

Subscribed and sworn to before me this 7th day of March, 1916.

[Seal]

C. C. HEID,

Notary Public for Alaska.

My Commission expires Oct. 21, 1917.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 7, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [24]

[Title.]

Minutes of Court—March 8, 1916—Trial.
Trial Continued.

Now, at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause and being called and each answering to his name, the trial of said cause was resumed, and the following proceedings were had, to wit:

Opening statement was made by R. F. Roth, United States Attorney in behalf of the Government following by statement by T. A. Marquam in behalf of the defendant.

Laura Herington was duly sworn and took the stand.

Witness retired. The jury was duly admonished by the Court and retired in charge of its sworn bailiffs during presentation and argument of motion and objection by counsel for defendant that no testimony be admitted in evidence in this cause for the reason that Count I and Count II as stated in the indictment herein do not constitute a public offence under the statute and after argument of said motion by counsel herein, the matter was taken under advisement by the Court.

At 12:25 o'clock P. M. the jury returned into court in charge of their sworn bailiffs and having been duly admonished by the Court, was excused in charge of their sworn bailiffs, to report at 2 o'clock P. M.

Court declared recess until 2 o'clock P. M.

2:00 P. M.

Now, at this time came into court R. F. Roth, United States Attorney, [25] and Reed W. Heilig, Assistant United States Attorney; came also the defendant in the custody of the United States Marshal and with his attorneys, Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in said cause in charge of their sworn bailiffs, and said trial was resumed, and the following proceedings were had, to wit:

The jury retired in charge of its sworn bailiffs.

Argument on objection to evidence being admitted in this cause was continued. The Court having considered the matters and things contained in said motion and objections, and being fully advised in the premises, it is ordered that said motion of defendant to the objection to the admission of evidence in this cause be and the same hereby is denied.

Hereupon, the jury returned into court in charge of its sworn bailiffs.

Laura Herington heretofore sworn, resumed the stand and testified in behalf of the plaintiff.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 3:50 o'clock P. M.

Court declared recess until 3:50 o'clock P. M.

3:50 P. M.

Thereafter, at 3:50 o'clock P. M. came the jury heretofore sworn, in charge of their sworn bailiffs; came also the defendant herein, in the custody of the United States Marshal; came also the respective parties and attorneys herein, and the trial of said cause was resumed.

Laura Herington resumed the stand and testified in behalf of the plaintiff.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs, to report at 8 o'clock P. M.

Court declared recess until 8 o'clock P. M. [26]

8:00 P M.

Now at this time, came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal, and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and the trial of said cause was resumed:

Laura Herington resumed the stand and testified in behalf of the Government on cross-examination.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 10 o'clock A. M. Thursday, March 9th, 1916.

CHARLES E. BUNNELL,
District Judge. [27]

[Title.]

Minutes of Court—March 9, 1916—Trial.

Trial Continued.

Now, at this time came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant herein in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jurors heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and being called, and each answering to his name

said trial was resumed, and the following proceedings were had, to wit:

Laura Herington resumed the stand and testified in behalf of the Government.

Ed Hall and Catherine Herington were each duly sworn and testified in behalf of the Government.

At 10:55 o'clock A. M. the jury was duly admonished by the Court and excused in charge of the sworn bailiffs until 11:05 A. M.

11:05 A. M.

Thereafter, at 11:05 o'clock A. M., the defendant in the custody of the United States Marshal, the jury heretofore sworn to try the issues in the above-entitled cause, the respective attorneys and parties all being present, the following proceedings were had, to wit:

J. P. Rose was duly sworn and testified in behalf of the Government.

Noon hour having arrived, the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 2 o'clock P. M. [28]

2:00 P. M.

Thereafter, at 2 o'clock P. M. came the defendant in the custody of the United States Marshal and the respective attorneys and parties as heretofore; came also the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs; and being called, and each answering to his name, the trial of said cause was resumed, and the following proceedings were had, to wit:

J. P. Rose heretofore sworn, resumed the stand

and testified in behalf of the Government.

The Government offers in evidence the affidavit of J. P. Rose which was received, admitted and marked "Plaintiff's Exhibit 1."

George Berg, Deputy U. S. Marshal, was duly sworn and testified in behalf of the Government.

At 3:50 o'clock P. M., the jury was duly admonished by the Court and excused in charge of their sworn bailiffs, until 4:05 o'clock P. M.

4:05 P. M.

Thereafter at 4:05 o'clock P. M. came the defendant in the custody of the United States Marshal and the respective attorneys and parties as heretofore; came also the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and it being stipulated by respective counsel that all were present, said trial was resumed, and the following proceedings had:

George Berg resumed the stand and testified in behalf of the Government.

J. H. Miller, Deputy U. S. Marshal, was duly sworn and testified in behalf of the Government.

Hereupon, the jury was duly admonished by the Court, and excused in charge of their sworn bailiffs, to report at 10 o'clock A. M. Friday, March 10th, 1916.

CHARLES E. BUNNELL,

District Judge. [29]

Plaintiff's Exhibit No. 1—Statement of J. P. Rose.

Wooldridge came in said, "Do you read all the time." Then he got up and said, "I think you are

burning a good deal of light.” I remarked, “It’s 8 o’clock,” and he went out and shut the light off in the front room. He asked me if I was going to the show and I said, “No.” He saw key on the wall and asked me if that was the key to the building, and I told him that that was the front door key. When Laura Herington came in she and Woolridge talked by the heater. Woolridge was standing between me and her and they said a few words which I did not understand. He got up and went out and then I went out for I did not want to be alone with her. Then he, Wooldridge, went back and talked to her in the back room for a few seconds and when he came back out she turned out the light *out*. Woolridge asked me about Laura while I was lying on the bed and said he wanted to screw her or words that gave me to understand that he wanted to have sexual intercourse with her. I answered, “I would not have anything to do with her until after the Grand Jury got through.” I told him the Grand Jury would get hold of a thing of that kind and would in-

J. P. ROSE.

P. McMULLEN.

JOHN C. WOOD.

G. B.

F. B. HALL.

[Seal] [30]

investigate it. I said, “It wouldn’t be safe.” I said in order to get at that they would take her up to Roth’s office and then they would take her to one of the assistants and then back down to the Grand Jury room again and they would sweat her until she would have to tell it. He asked me if that clock wasn’t fast

and I said about seven minutes. When I went back into the house I told her to come on out that somebody was watching her. I recognized who they were and told him so then I turned and went back in and got the girl.

J. P. ROSE.

G. B.

F. B. HALL.

JOHN C. WOOD.

P. McMULLEN.

Subscribed and sworn to before me as J. P. Rose's voluntary statement by J. P. Rose himself.

[Seal] FRANK B. HALL,
Notary Public in and for the Territory of Alaska.

My commission expires Oct. 25, 1919. [31]

[Indorsements.] [32]

[Title.]

Minutes of Court—March 10, 1916—Trial.

Trial Continued.

Now, at this time, R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney appearing in behalf of the Government; came also the defendant herein in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs and said trial was resumed and the following proceedings were had, to wit:

J. H. Miller Deputy U. S. Marshal, heretofore

sworn, resumed the stand and testified in behalf of the Government.

At 11:05 o'clock A. M., the jury was duly admonished by the Court and excused in charge of their sworn bailiffs until 11:15 o'clock A. M.

11:15 A. M.

Thereafter, at 11:15 o'clock A. M., came the defendant in the custody of the United States Marshal, came the respective counsel and parties as heretofore; came likewise the jury heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs and the following proceedings were had, to wit:

J. H. Miller resumed the stand and testified in behalf of the Government.

George Herington was duly sworn and testified in behalf of the Government.

Mrs. George Herington was duly sworn and testified in behalf of the Government. [33]

Whereupon, the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 2 o'clock P. M.

2:00 P. M.

Now, at this time, came the defendant, in the custody of the United States Marshal, came also R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government and Bion A. Dodge and T. A. Marquam, counsel for defendant; came likewise the jury heretofore impaneled and sworn to try *ane* issues of the above-entitled cause, in charge of their sworn bail-

iffs and being called and each answering to his name, the trial of said cause was resumed and the following proceedings had, to wit:

Mrs. George Herington resumed the stand and testified in behalf of the Government.

J. P. Norris was duly sworn and testified in behalf of the Government.

Hereupon, a motion was made by the defense to exclude the testimony of J. P. Norris as a member of the grand jury for this term of court. The jury was duly admonished and excused in charge of their sworn bailiffs during the argument of said motion.

After argument by the respective counsel herein, said motion was denied.

The jury returned into court in charge of their sworn bailiffs, and it was stipulated by respective counsel that all were present.

H. N. Shead was duly sworn and testified in behalf of the Government.

R. M. Crawford was duly sworn and testified in behalf of the Government.

At 4 o'clock P. M. the jury was duly admonished by the Court and excused in charge of their sworn bailiffs until 4:15 o'clock P. M.

4:15 P. M.

Thereafter, at 4:15 o'clock P. M., the jury in charge of their sworn bailiffs, the defendant in the custody of the United States marshal and the respective parties and attorneys being present, the [34] said trial was resumed.

Tom Utigard, W. W. Pendergraft, J. J. Buckley, Frank B. Hall and W. G. Cassels were each duly

sworn and testified in behalf of the Government.

Hereupon the jury was duly admonished by the Court and excused in charge of their sworn bailiffs to report at 10 o'clock A. M., Saturday, March 11th, 1916.

CHARLES E. BUNNELL,
District Judge. [35]

[Title.]

Minutes of Court—March 11, 1916—Trial.

Trial Continued.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States marshal and with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jurors heretofore sworn to try the issues in the above-entitled cause and being called and each answering to his name and it appearing that there are other matters to come before the Court at this time, and respective counsel consenting,

It is ordered that the trial of this cause be continued until 2 o'clock P. M. this day, and the jury having been duly admonished, were excused in charge of their sworn bailiffs until 2 o'clock P. M. this day.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant in the custody of the United States Marshal and with his at-

torneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues of the above-entitled cause, in charge of their sworn bailiffs, and said trial was resumed and the following proceedings, had, to wit:

Mrs. George Herington resumed the stand and testified in behalf of the Government.

Government rests.

Hereupon, the jury having been duly admonished by the Court, retired in charge of their sworn bailiffs; whereupon counsel for defendant [36] made a motion for an instructed verdict of not guilty to Count II of said indictment herein, and after argument by respective counsel herein, said motion was denied, to which ruling defendant notes an exception, which exception is allowed.

Motion was then made by counsel for the defendant that counsel for the plaintiff elect under which count in the indictment in this cause the Government relies for conviction and after argument of said motion by respective counsel it was denied, to which ruling defendant notes an exception, which exception is allowed.

Court declared recess until 3:40 P. M.

3:40 P. M.

Thereafter, at 3:40 o'clock P. M. came the jury in charge of their sworn bailiffs; came also the respective parties and attorneys herein as heretofore and the defendant in the custody of the United States Marshal, and the trial of said cause was resumed and the following proceeding had, to wit:

Axel Running was duly sworn and testified in be-

half of the defendant.

J. H. Miller was recalled and testified in behalf of defendant.

Bion A. Dodge, by consent of counsel for the Government, was duly sworn and testified in behalf of the defendant.

Ed Hall was recalled and testified in behalf of the defendant.

The jury, having been duly admonished by the Court, were excused until 8 o'clock P. M.

8:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues in the above-entitled cause, in charge of their sworn bailiffs, and the following proceedings were had, to wit:

George Berg, Deputy U. S. Marshal, was recalled and testified in [37] behalf of the defendant.

Defendant offers in evidence a one pint glass bottle which was received, admitted and marked Defendant's Exhibit "A."

Mrs. George Herington was recalled and testified in behalf of defendant.

Aaron Kennedy was duly sworn and testified in behalf of defendant.

Defendant offers in evidence a half pint glass bottle which was received, admitted and marked Defendant's Exhibit "B."

J. E. Clark was duly sworn for and in behalf of defendant.

At 8:35 o'clock P. M. the jury were duly admonished by the Court and retired in charge of their sworn bailiffs.

At 8:42 P. M. the jury returned into court in charge of their sworn bailiffs and having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 10 o'clock A. M. Monday, March 13th, 1916.

CHARLES E. BUNNELL,
District Judge. [38]

[Title.]

Minutes of Court—March 13, 1916—Trial.

Trial Continued.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury in this cause in charge of their sworn bailiffs, and the trial of said cause was resumed and the following proceedings had, to wit:

Frank R. Clark was duly sworn and testified in behalf of the defendant.

Bion A. Dodge was recalled and testified in behalf of the defendant.

W. H. Wooldridge, defendant herein, was duly sworn and testified in his own behalf.

Hereupon, the jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 11:10 A. M.

11:10 A. M.

Thereafter, at 11:10 o'clock A. M. came the jury in charge of their sworn bailiffs; came also the defendant in the custody of the United States Marshal and the respective attorneys and parties as heretofore and said trial was resumed.

W. H. Wooldridge resumed the stand and testified in his own behalf.

The jury was duly admonished by the Court and excused in charge of the sworn bailiffs until 2 o'clock P. M.

2:00 P. M.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant [39] in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury in charge of their sworn bailiffs and each having answered to his name, the trial of said cause was resumed and the following proceedings had, to wit:

W. H. Wooldridge, defendant herein, resumed the stand and testified in his own behalf.

Defendant rests.

Mrs. George Herington was recalled by the plaintiff and testified in rebuttal.

2:27 P. M. Government rests. Defendant rests.

At 2:27 o'clock P. M. the jury having been duly

admonished by the Court, were excused in charge of their sworn bailiffs until 2:40 P. M.

2:40 P. M.

Thereafter, at 2:40 o'clock P. M. came the respective counsel and parties as heretofore; came also the defendant in the custody of the United States Marshal and said trial was resumed.

Motion was made by the defendant to exclude certain testimony given by J. H. Miller and the Court being advised in the premises, and objection having been made thereto by the United States Attorney, said motion was denied, to which ruling defendant notes an exception, which exception was allowed.

Motion was made by defendant for an instructed verdict on Count I of the indictment herein and objection being made by the U. S. Attorney and the Court being advised in the premises, said motion was denied, to which ruling defendant notes an exception, which exception is allowed.

Motion was made by defendant for an instructed verdict on Count II of the indictment herein and objection being made by the U. S. Attorney and the Court being advised in the premises, said motion was denied, to which ruling defendant notes an exception, which exception is allowed.

At 2:50 o'clock P. M. the jury returned into court in charge [40] of their sworn bailiffs, and it was stipulated by respective counsel that all were present.

At 2:57 P. M. opening argument was made by Reed W. Heilig in behalf of the Government followed by argument by Bion A. Dodge in behalf of the defendant.

Hereupon the jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 10 o'clock A. M., Tuesday, March 14th, 1916.

CHARLES E. BUNNELL,
District Judge. [41]

[Title.]

Minutes of Court—March 14, 1916—Trial.
Trial Continued.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney for and in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore impaneled and sworn to try the issues in the above-entitled cause in charge of their sworn bailiffs; whereupon the following proceedings were had, to wit:

Argument was had by T. A. Marquam for and in behalf of the defendant.

Hereupon, the jury having been duly admonished by the Court, were excused in charge of their sworn bailiffs until 2 o'clock P. M.

2:00 P. M.

Now, thereafter, at 2 o'clock P. M. came R. F. Roth, United States Attorney, and Reed W. Heilig, Assistant United States Attorney, in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys T. A. Marquam and Bion A. Dodge; came likewise the jury

in charge of their sworn bailiffs and each answering to their names as present, said trial was resumed and the following proceedings had, to wit:

At 2:03 o'clock P. M. closing argument was commenced by R. F. Roth, United States Attorney.

Thereafter, the Court read its instructions to the jury, whereupon S. T. Kincaid and R. K. Latimer were each duly sworn as bailiffs in charge of said jury, and at 4:45 P. M. said jury retired [42] in charge of their sworn bailiffs to deliberate upon their verdict.

CHARLES E. BUNNELL,
District Judge. [43]

[Title.]

Minutes of Court—March 14, 1916.

Verdict.

8:00 P. M.

Now, at this time came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney; came also the defendant in the custody of the United States Marshal, with his attorneys Bion A. Dodge and T. A. Marquam; came likewise the jury heretofore sworn to try the issues of the above-entitled cause in charge of their sworn bailiffs and being called and each answering to his name, the said jury did present, by and through their foreman, in open court, their verdict in said cause, which is in words and figures as follows, to wit:

[Title.]

Verdict.

“We, the jury, in the above-entitled action, duly impaneled and sworn, do find the defendant not guilty of the crime of rape charged in Count I of the indictment, and do find the defendant guilty of the crime of attempt to commit rape charged in Count II of the indictment.

Fairbanks, Alaska, March 14, 1916.

L. J. HEACOCK,
Foreman.”

—which said verdict was received by the Court and ordered filed with the clerk of the court.

The jury was discharged from further deliberation in said cause and the defendant was remanded to the custody of the United States Marshal to await sentence.

CHARLES E. BUNNELL,
District Judge. [44]

[Title.]

Verdict.

We, the jury in the above-entitled action, duly impaneled and sworn, do find the defendant not guilty of the crime of rape charged in Count I of the Indictment, and do find the defendant guilty of the crime of attempt to commit rape, charged in Count II of the Indictment.

Fairbanks, Alaska, March 14, 1916.

L. J. HEACOCK,

Foreman.

Entered in Court Journal No. 13, page 452.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Mar. 14, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [45]

[Title.]

Motion for New Trial.

The defendant in the above-entitled action now moves the Court to vacate and set aside the verdict of "Guilty," returned by the jury in the said action, to the charge contained in the second count of the indictment against the defendant, upon the fourteenth day of March, 1916, and to grant a new trial to the defendant upon and for the grounds, reasons and causes affecting the substantial rights of the defendant as follows:

1. Irregularity in the proceedings of the court and abuse of discretion exercised by the Court by which defendant was prevented from having a fair trial in this:

J. E. Gatrell, a juror in the regular panel, was improperly excused from service on the jury in said action over the objection of defendant after he had duly and properly qualified as such juror by stating he could give defendant a fair and impartial trial by giving in substance to the testimony of a certain witness upon the trial of said cause, the weight and credibility to which he thought the same entitled and

to the excusing of the juror the defendant duly excepted.

A. J. Painter, a juror on the regular panel, was improperly excused by the Court from service on the jury in said action, over the objection of the defendant, after said juror had duly qualified himself as such juror by stating [46] he would and could be fair and impartial, but in substance said he would give the defendant the benefit of the doubt so far as his conscience would permit and the law would allow; that he would and could follow the instruction of the Court; to the excuse of which juror by the Court, the defendant duly excepted.

2. Insufficiency of the evidence to justify the said verdict of "Guilty" upon said second count in said indictment and that it is against law, because:

The testimony falls far short of establishing the commission charged or any offense insomuch as it fails to prove or tend to prove there was an intent to commit a crime, and the testimony fails to prove any overt act done or committed by the accused to commit a crime with such intent, and that whatever act or acts were done amounted at the most to but mere solicitation without any subsequent effort whatever towards a commission of an offense as defined by the Alaska statute, making an attempt a *substantiave* offense, the mere act of solicitation as disclosed by the testimony is not an attempt. Nor was any act disclosed by the testimony which proved or tended to prove the commencement of the consummation of any attempt whatever; but, on the contrary, tended to and did conclusively show voluntary abandonment of any at-

tempt, if any there was. The whole of the testimony also shows there was no act or acts by any person or persons whomsoever whereby any alleged attempt to commit an offense by the accused was prevented or intercepted.

3. Errors in law occurring at the trial, and duly excepted to by the defendant, viz:

In answer to the question asked by the United States Attorney: "Did you hear any talk during that time [47] (between two or three days before Christmas) with Laura Herington about W. H. Woolbridge" (at the Morency house), the witness Ed Hall answering "Yes." Then in answer to the question: "What did he tell you?" testified over objection of defendant as follows: "She told me she was on the way home and met defendant at Gordon's Glass Block and he asked her to take a walk with him; she went to a cabin across the way from his place and defendant done something to her and had given her two dollars fifty cents and owed her a dollar more." To which testimony and similar testimony and the whole of the testimony of the said Ed Hall the said defendant then and there duly objected upon the ground the same was incompetent, immaterial and irrelevant heresay and not a part of the *res gestae*, and not in the nature of a complaint nor intended to be a complaint and not made to a person to whom a complaint would naturally be made. Which objection in substance as above stated the Court overruled and the defendant duly excepted.

The witness John P. Rose, after having duly testified on behalf of the Government, was shown a paper

by the United States Attorney and asked in substance if his signature was subscribed thereto. To which question defendant objected on the grounds the same was incompetent, immaterial, irrelevant, no foundation laid and defendant's counsel having not inspected said writing, which objection was overruled by the Court, to which defendant excepted. The Government attorney then read from said paper certain detached portions to the witness Rose among others, "Did not Wooldridge ask you about Laura Herington and gave you to understand that he (Wooldridge) desired to have sexual intercourse with said Laura Herington"? To which question and to questions of a similar nature defendant duly objected because the same were leading and were asked for the purpose of impeaching the Government witness and no foundation having been laid. [48] And other objections made thereto as to the same appears in the stenographic notes of the reporter in said court, which objection and objections and the every thereof were overruled by the Court and duly excepted to by the defendant. And other and like and similar questions based upon and read from said paper were propounded to said witness Rose, to which objection was duly made by counsel for defendant as the same appears in said stenographic notes, which objections were overruled by the Court and exceptions duly taken by defendant. And the Government counsel asked the said witness Rose whether he did not testify before the grand jury in the Wooldridge case and stated to said grand jury among other things in answer to the questions

there asked him, "If there was a key to the building and you said it was a key to the front door," or words to that effect; which question was duly objected and excepted to by defendant upon the grounds the same was incompetent, irrelevant and immaterial, leading and an effort on behalf of the Government to impeach its own witness, and other objections made by defendant as the same appears in said stenographic notes. And the Government asked other and similar questions of like nature concerning alleged conversations had by witness with defendant in the place of business of said witness, to which question and questions, and each and every thereof, whether based upon said written paper or otherwise, the defendant duly objected for the grounds and reasons specified in said stenographic report, which objections were by the Court overruled, to which the defendant duly excepted.

And the counsel for the Government offered said written statement in evidence to which the defendant objected on the ground that the same was incompetent, and immaterial and irrelevant, and was for the purpose of impeaching their [49] own witness. Which objection was overruled by the Court and duly excepted to by the defendant, and other questions were so propounded by the Government to the witness Rose in the matter and in the manner of his making the said written statement and as to the matters and things to which he testified before the grand jury, which testimony was for the apparent purpose of discrediting the truth of the testimony of the said witness upon his direct examination, to which

and each and every question and matter and thing therein and the whole thereof the defendant objected to the introduction thereof before said jury, upon the grounds that the same was incompetent, irrelevant and immaterial, leading, suggestive for the purpose of impeaching their own witness and other objections as they appear in said stenographic notes. Which objections were overruled to which defendant duly excepted.

The witness George Berg having his attention called to the paper above referred to alleged to have been signed by the witness Rose in answer to the question as to whether he had heard the conversation and circumstances leading up to the said signature of the said Rose, answered he was present in the marshal's office that evening in substance. To which testimony of said Berg and all of his testimony relating to the signing of said statement by the witness Rose and as to the statements made by said Rose at said time and place, the defendant duly objected upon the grounds that the same were incompetent, irrelevant and immaterial, leading and was an attempt to impeach the Government witness Rose, and other objections stated in the said stenographic report. Which objections were overruled by the Court, to which defendant duly excepted [50] and the witness Berg in response to a question for that purpose over the objection of the defendant and exception thereto, testified in substance: "Sometime in the fore part of February, I was informed that I was to undertake the investigation of Wooldridge, and also to learn whether or not Laura Herrington was

telling the truth," all of which testimony and testimony of like and similar character was objected to by the defendant upon the grounds stated in said stenographic report, which objections were overruled by the Court and duly excepted to by the defendant.

The witness J. H. Miller for the Government, the chief deputy marshal, in answer to a question in substance as to when he first heard of the matters and things involved in the second count of the indictment in the district attorney's office, stated in substance; "You (Roth) asked me to get George Herrington and Laura Herrington and I got them and brought them to your office, and there you (Roth) or myself or both of us asked them about Wooldridge and others." Which questions and which answers were duly objected to by the defendant for the reason that they were incompetent, and hearsay and were not asked in the presence of the defendant. Which objections were overruled by the Court, to which the defendant duly excepted. Thereupon the said witness Miller proceeded to detail a conversation and conversations had with the Government attorney Roth, one Laura Herrington and George Herrington, in the absence of the presence of the defendant Wooldridge. Which conversation related to and referred to all of the alleged facts and circumstances involved in the two counts set forth in the indictment in this action. Such conversations detailed and depicted the alleged offense charged [51] in said first count and detailed all the facts and circumstances, incidents, acts, conversations between other persons concerning and relating to the charge in the

said second count of said indictment. To which the counsel for the defendant duly objected to each and every of said conversations and the answers of the said witness Miller to the question of the Government attorney relating thereto upon the ground and because the same were incompetent, were hearsay and were not had in the presence of the defendant, and other objections as the same appear in said stenographic notes. Which objections and each thereof were overruled by the Court, to which the defendant duly excepted. And upon the completion of the said direct testimony counsel for the defendant moved to strike out the said testimony of the said Miller, which motion was denied by the Court, to which the defendant duly excepted.

And the witness Miller also testified in response to direct questions for that purpose in substance that he had taken a statement in writing of the said witness Rose in the presence of the Deputy marshals McMullen, Hall and Berg, and that the said statement of the said Rose was written by him pursuant and in answer to questions, statements, interruptions, interjections by himself and the said deputies especially the deputy Berg and afterwards signed by the said witness Rose. To which testimony and all testimony of a like and similar character on the part of the said witness Miller, the defendant duly objected, upon the grounds that the same was incompetent, irrelevant, immaterial, and an [52] attempt to impeach the testimony of the Government witness Rose, and other objections stated in said stenographic report. Which objections and each

thereof were overruled by the Court and duly excepted to by the defendant.

The testimony of the witness J. P. Norris, a member of the grand jury, which found said indictment, in reponse to the questions of the Government counsel for that purpose was to the effect that the witness Rose was sworn before said grand jury, and thereupon Government counsel read to said witness Norris extracts from said purported signed statement of said witness Rose and asked the witness Norris if that was what Rose testified to before the grand jury, to which question and questions of like manner and similar nature the said witness Norris answered "yes," to which question and questions and answer and answers the defendant duly objected upon the grounds that the said question and questions were improper and did not test the recollection of the witness Norris, and that the same were incompetent, irrelevant, immaterial, leading, hearsay because the defendant was not present, and that no foundation had been laid for the impeachment of the witness Rose, who was a Government witness and was sought to be impeached by the Government itself. To which objection and such other objections as appear in the stenographic report and each and every thereof were overruled by the Court, to which the defendant duly excepted.

The witness H. N. Shead a member of said grand jury was asked substantially as to the same matters from the same instrument concerning the testimony of the witness Rose before said grand jury, and to the same effect were his answers as were the witness

Norris and to which for the same [53] reasons and causes the same objections were made by the defendant, overruled by the Court and excepted to by the defendant.

The witnesses R. M. Crawford, Tom Utaguard, and William Pendagraft, each being grand jurors before whom said witness Rose had appeared to testify each being respectively and in the order named, interrogated by the said Government attorney from the said purported statement of said Rose reading therefrom in the language thereof the statements therein in answer thereto each answered in response thereto "yes," to which testimony and the testimony of each of said witnesses as the same was introduced the counsel for the defendant duly objected for the reason that the propounding of a question of that character in that form did not call for the recollection of the testimony of the said witnesses but on the contrary called for a categorical answer to a question that was taken verbatim from said alleged signed statement, and did not and could not test the recollection of said witness and witnesses as to what Rose had really testified to before said grand jury. Objection was further made because said question was leading, because it was hearsay, because it was not said in the presence of the defendant, because it was incompetent and immaterial and irrelevant for any purpose, and because it was not a proper impeaching question, and because no foundation had been laid for the purpose of impeaching the testimony of the Government's own witness, Rose. Which objections and each thereof and the

other objections in the stenographic notes were overruled by the Court, to which the defendant duly excepted.

The witness Frank B. Hall a deputy marshal [54] testified in response to leading questions that he was present in the rear room of the marshal's office on the evening of February 15th, 1916, at which were present deputy marshal Miller, McMullen, Berg, himself and witness Rose, and that Rose made such alleged statements in response to inquiries made by him by Miller and Berg taken down and written by Miller intermittently as the questions, statements and conversations called forth answers from said Rose, and after having been completed was read to said Rose by said witness Hall, which testimony and the whole and each and every part and portion thereof was introduced and testified to by the said Hall over the objections of the defendant which objections were that it was intended to impeach the testimony of said Rose, no foundation had been laid therefor, it was hearsay, it was to impeach the Government's own witness, the defendant was not present and it was immaterial, incompetent and irrelevant for any purpose, which objections and each thereof together with the objections that appear in said stenographic report the Court then and there overruled to which the defendant then and there duly excepted.

The witness Laura Herrington was recalled by the Government after the cross-examination and upon redirect examination by the Government was asked the following questions; "Did you lay down on the

coat"? Answered "Yes." Objected to by defendant not proper redirect examination, leading, self-serving and other objections stated in said stenographic report, which objections and each thereof were overruled to which defendant excepted. Government counsel then asked "Were your legs apart" to which counsel for the defense objected upon the grounds the question was [55] leading, was not proper redirect examination, incompetent and other objections urged in said stenographic report, which objections were overruled by the Court, to which the defendant duly excepted, whereupon the witness answered "yes." The Government then asked "what defendant did with her?" to which objection was duly made, not proper redirect examination and incompetent, and other objections which appear in said stenographic report, which objections were overruled, to which exception was taken by defendant. Whereupon witness answered; "I can't explain it." The Government counsel then asked the following question, "did you have sexual intercourse?" to which question defendant objected upon the grounds that the same was leading and suggestive, was not proper redirect examination, was self-serving, was incompetent and the objections stated in said stenographic report, which objections were overruled by the Court, to which the defendant duly excepted. Thereupon the witness answered, "yes."

And for the reason and because of said errors of law occurring at said trial and excepted to by the defendant and other errors occurring therein by the improper interrogation of witnesses duly objected to

by the counsel for defendant, and excepted to when the Court overruled said exceptions which cannot be recalled in the brief period of time provided for the filing of a motion for a new trial which more fully appear in the shorthand notes made at said trial, the defendant is entitled to have said verdict set aside.

At the close of the testimony of the Government counsel for the defendant moved the Court to direct a verdict to be found by the jury upon said second count in said indictment that the defendant be found "not guilty" upon the [56] grounds and for the reason that the testimony of the Government failed to establish the commission of the offense charged in said second count of said indictment or any offense whatever, and for the reason that such evidence failed to prove or tended to prove there was any intent to commit a crime; that it failed to prove or tend to prove any overt act committed by the accused with intent to commit an offense; that such evidence failed to prove or tend to prove anything more than mere solicitation and that it failed to prove or tend to prove any subsequent act or effort whatever approaching to any degree whatever the necessary commencement of the consummation of any attempt to commit an offence. This is the substance of said motion, the exact words of which appear in said stenographic report.

The counsel for the defendant also at said time moved and assigned as a reason therefor in substance that the second count in said indictment failed to

charge any offence whatever under the statutes of Alaska.

Counsel for defendant at said time and place also moved in substance that the Government then and there elect on which count in said indictment the Government would stand and on which count it would elect to have a verdict found. Which motions and each thereof were by said *said* Court then and there denied, to the denial of such motions, and each thereof, by the said Court the said defendant by his counsel then and there duly excepted.

The defendant called as a witness one J. E. Clark, the clerk of said court, after the usual preliminary questions asked said witness Clark the following question; "Have you among your records a record in you office of an [57] indictment against J. P. Rose for rape?" to which objection was immediately made by Government counsel and sustained by the Court before counsel for defendant could be heard. To the sustaining of which objection counsel for the defendant duly excepted.

At the close of the testimony in said case counsel for the defendant renewed the motion to the Court that the Court instruct said jury to find a verdict of "not guilty" upon the second count of said indictment for the reason in substance; that the evidence in said case fails to establish the commission of any offence whatever, and that the said count in said indictment fails to charge an offence. Which motion was by said Court then and there denied and to the denial of which counsel for the defendant then and there duly excepted. [58]

Errors in law in giving instructions to jury, and duly excepted to by defendant, as follows:

Defendant excepts to instruction number 12 given and read to the jury by the Court for the reason that it is an abstraction purely, and not directing the jury's attention to the particular evidence referred to, and in no wise aiding them to come to a correct conclusion as to the evidence the effect of which is sought to be limited.

Defendant excepts to instruction number 13 as given and read to the jury by the Court, as not correctly stating the law attempted to be covered in said instruction.

Defendant excepts to instruction number 15 as given and read to the jury by the Court, for the reason that it is an abstraction, tends to mislead, and is not a correct statement of the law attempted to be charged.

Defendant excepts to instruction number 17 as given and read to the jury by the Court, as not a correct statement of the law attempted to be covered in said instruction. [59]

Defendant excepts to instruction number 18 as given and read to the jury by the Court, as singling the defendant out from all other witnesses in the case and laying special stress upon the question of his interest in the result of the trial, where as a matter of fact the instruction should apply to all the witnesses in the case if the jury believe they have any interest in the result of the trial.

The defendant excepts to instruction number 20

as given and read to the jury by the Court for the reason that the same is not a complete or accurate statement of the law attempted to be covered by said instruction, and not properly covered by other instructions in the case.

Defendant excepts to instruction number 21 as given and read to the jury by the Court for the reason that the same is not a correct statement of the law attempted to be covered therein; and for the further reason that nowhere else in said instructions are the omissions, constituting a correct statement of the law involved in this construction of the law, supplied.

Defendant excepts to instruction number 22 as given and read to the jury by the Court, for the reason that the same is not an accurate statement of the law involved and attempted to be charged in said instruction, nor is the error corrected or cured in other instructions in the case. [60]

Defendant excepts to instruction number 23 as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction.

Defendant excepts to instruction number 23, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction, and that the defects therein are not supplied by any other instructions.

Defendant excepts to instruction number 25, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the

law attempted to be set out in said instruction.

Defendant excepts to instruction number 26, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law, misleading, and that the jury should have been instructed to totally disregard statements made by the witness Laura Herrington to said Ed Hall; and for the further reason that they are not competent to prove any fact involved in this case.

Defendant excepts to instruction number 27, as given and [61] read to the jury by the Court, for the reason that the same is incomplete, misleading, and not a correct statement of the law attempted to be given in said instruction.

Defendant excepts to instruction number 28, as given and read to the jury by the Court, for the reason that the same is incomplete, misleading, not a correct statement upon the question of intent, and the necessary proof required to prove such intent upon the part of the defendant.

Defendant excepts to instruction number 29, as given and read to the jury by the Court, for the reason that the same is incomplete, misleading, and not a correct or accurate statement of the law of corroboration of a female upon whom a rape is alleged to have been committed.

Defendant excepts to instruction number 30, as given and read to the jury by the Court, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction.

Defendant excepts to instruction number 31, as given and read to the jury by the Court, for the rea-

son that the same is an abstraction, and for the further reason that the latter part of said instruction has no application to any facts in this case or to the crimes charged in this case, and is misleading, and tends to confuse and mislead the jury upon the question of abandonment. [62]

Defendant excepts to instruction number 32, as given and read to the jury by the Court, for the reason that the same is involved, confusing, contradictory in itself, misleading, not applicable to the issues presented in the indictment; that it is not the law of the case from any standpoint, and the hypothesis upon which it is based fails to collate all the material elements of the charge as a basis for the conclusion of guilt.

The defendant excepts to the ruling of the Court refusing to give and read to the jury instructions from number 1 to 11, both inclusive requested by the defendant, for the reasons that the same are correct statements of law as to the points covered by said instructions, and no similar, proper or adequate statements of the law have been given elsewhere by the Court in his instructions as given and read to the jury.

The COURT.—All of which exceptions are allowed. The Court desires to modify instruction number 12. (Reads.) “You are instructed that certain testimony has been admitted in this case for specified and limited purposes, which, at the time of its reception by the Court, was so limited. You will bear in mind and confine yourselves in the consideration of such testimony to the limited purpose for

which it was admitted.” That is instruction number 12 as originally read to you. Now, in addition to that, the Court has added: (Reads:) “A particular application of this instruction is directed to the evidence of the witness J. H. Miller, wherein he [63] testified to statements made to him by Laura Herrington prior to the investigation testified to by him, said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception.”

The defendant excepts to instruction number 12, as amended by the Court and as read to the jury, for the reason that the same is an abstraction, and in failing to tell the jury or instruct them as to what purpose, if at all, the same could be lawfully and legally considered by them; that the Court should have instructed the jury in this connection that all of the evidence of the witness J. H. Miller with reference to any conversation upon the part of Laura Herrington relative to the commission of the offense charged in Count I of the indictment herein was hearsay evidence, not competent to be considered by the jury for any purpose, and should have been withdrawn by the instructions of the Court from the consideration of the jury; that if there is any lawful purpose or legal reason why said testimony could or should be considered by the jury, that such specific purpose should be pointed out to the jury and should not be left to the jury to guess at.

The COURT.—Which exception is allowed. [64]

For the reason, upon the grounds and because of the above-mentioned errors of law occurring at the

trial of said action and excepted to by the defendant, and for the further reason that because and upon the grounds of all error and errors occurring at the trial of said cause and excepted to by the defendant, which more fully appear in the shorthand notes of the court reporter taken in said cause at the trial thereof, the defendant in said cause was prevented from having a fair and impartial trial.

Upon the grounds and for the reason and because of the insufficiency of the evidence in said cause to justify the jury in said cause in finding a verdict of guilty upon the second count contained in said indictment the defendant in said cause is entitled to have said verdict vacated and set aside.

For the reason and because of error at law occurring at said trial and excepted to by the defendant in the matter of giving instructions to said jury, the court refused to give the instructions requested by the defendant numbered one to eleven inclusive; the jury was not properly advised and instructed as to the substantive law and rules of evidence applicable to the said cause.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant.

Service of the above motion is hereby admitted by receipt of a copy hereof this 16th day of March, 1916.

REED W. HEILIG,

Asst. U. S. Attorney. [65]

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant.

Motion for New Trial. Filed in the District Court, Territory of Alaska, 4th Div., Mar. 16, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [66]

[Title.]

Motion in Arrest of Judgment.

The defendant in the above-entitled action, on this 16th day of March, A. D. 1916, after the verdict of guilty found by the jury upon the second count in the indictment against the defendant in said action upon the trial thereof, which was concluded on the 14th day of March, 1916, and before the rendition of judgment by the Court upon said verdict, now moves the court to arrest the judgment in this cause and discharge the defendant from this Court for the following reasons:

1. That the said second count in said indictment does not conform to the requirements of chapter seven, title fifteen, of the Code of Criminal Procedure for the Territory of Alaska, because:

The facts stated in the second count of said indictment do not constitute a crime.

Wherefore and for the reasons apparent in said indictment, and the second count therein, and the record, the defendant prays that said judgment be arrested.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant.

Service of the copy foregoing motion in arrest of Judgment received this 16th day of March, 1916.

REED W. HEILIG,

Asst. U. S. Attorney.

Attorney for Plaintiff.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant. Motion in Arrest of Judgment. Filed in the District Court, Territory of Alaska, 4th Div., Mar. 16, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [67]

[Title.]

Minutes of Court—March 25, 1916.

Order Setting Hearing of Motion for New Trial.

Now at this time came R. F. Roth, United States Attorney in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam and respective counsel consenting,

IT IS ORDERED that hearing on defendant's motion for a new trial in this cause be, and the same is, hereby set for Monday, March 27th, 1916, to following hearing in cause No. 700—Cr. United States, vs. Carl Johanson.

CHARLES E. BUNNELL,

District Judge. [68]

[Title.]

Minutes of Court—March 27, 1916.

Hearing on Motion.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant herein in the custody of the United States Marshal and with his attorneys Bion A. Dodge and T. A. Marquam and defendant's motions for a new trial and arrest of judgment came on regularly before the Court and argument was had by respective counsel.

Court declared recess until 2 P. M.

2:00 P. M.

Now, at this time, came R. F. Roth, United States Attorney and Reed W. Heilig, Assistant United States Attorney in behalf of the Government; came also the defendant in person and in custody of the United States Marshal and Bion A. Dodge and T. A. Marquam appearing in behalf of defendant, defendant's motions for a new trial and arrest of judgment came on for continuance of hearing and argument having been had by respective counsel, the matter was taken under advisement by the Court.

CHARLES E. BUNNELL,

District Judge. [69]

[Title.]

Minutes of Court—March 30, 1916.

Order Denying Motions.

Now, at this time, came R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys in behalf of the Government; came also the defendant in the custody of the United States Marshal and with his counsel Bion A. Dodge and T. A. Marquam, and defendant's motions for a new trial in this cause and for arrest of Judgment herein having been previously argued before the Court and submitted and the Court now being fully advised,

It is ordered that said motions be, and the same hereby are, denied.

(Clerk's Note: Defendant excepts to above ruling, which exception is allowed.)

CHARLES E. BUNNELL,

District Judge. [70]

[Title.]

Minutes of Court—March 30, 1916.

Order Fixing Time for Sentence.

Now, at this time came R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorneys Bion A. Dodge and T. A. Marquam, and there being no objections,

It is ordered that the time for pronouncing sentence upon the defendant herein be, and the same hereby is, fixed at 10 o'clock A. M., Tuesday, April 4th, 1916.

CHARLES E. BUNNELL,
District Judge. [71]

[Title.]

**Motion for Extension of Time in Which to Prepare,
Present and Have Settled Bill of Exceptions.**

Motion is hereby made by the defendant in the above-entitled action for further time to prepare, present and have settled Bill of Exceptions in the above-entitled cause.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, vs. W. H. Wooldridge. Motion for Extension of the Time Within Which to Prepare, Present and have Settled Bill of Exceptions. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 5, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [72]

[Title.]

Affidavit of Bion A. Dodge.

United States of America,
Territory of Alaska,—ss.

Bion A. Dodge, being first duly sworn, on oath deposes and says: That T. A. Marquam, Esq., and this

affiant were the persons retained by the defendant in this case to represent him in the defense of said action, the trial of which action was commenced on the 6th day of March, 1916, and continued until the 15th day of March, 1916, resulting in a verdict of guilty upon the second count; that upon the 17th day of March, 1916, a motion for a new trial was duly filed and the same was heard on the 27th day of March, 1916 and on Thursday, the 30th day of March, 1916, the said motion for a new trial was duly denied and the date for pronouncing judgment upon the defendant was then and there on said last-named date fixed for Tuesday, the 4th day of April, 1916; that on said last-named date the time for pronouncing judgment was then and there duly continued until Saturday, the 8th day of April, 1916.

Affiant further says that from whatsoever judgment this Court may in its power and the exercise of its discretion may pronounce against the said defendant, this defendant desires to and has made preparations for appeal therefrom, and to that end has already arranged with Mr. E. T. Wolcott, the official court stenographer, and reporter, for a certified copy of the transcript of his reporter's notes, which transcript this affiant is informed will be made and extended at or about the departure of the Court down river [73] in June; that it will be necessary to submit the same to the United States Attorney and thereafter to settle the same.

Therefore this affiant respectfully requests this Court to extend the time for the preparation, presentation and settlement of the Bill of Exceptions in

this case until the 25th day of August, 1916, or until the Court shall return from down river.

Affiant further says that the defendant in this action feels himself aggrieved at the verdict of the jury in said case and desires to appeal from the judgment to follow said verdict whatever the same may be, and that said appeal is taken in good faith and for no other purpose.

BION A. DODGE.

Subscribed and sworn to before me this 5th day of April, 1916.

[Seal]

C. C. HEID,

Notary Public in and for Alaska.

My commission expires October 21, 1917.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America, vs. W. H. Wooldridge. Affidavit of Bion A. Dodge. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 5, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [74]

[Title.]

Order Extending Time to August 25, 1916, for Preparation, etc., of Bill of Exceptions.

Order Extending Time for Preparation, Presentation and Settlement of Bill of Exceptions.

WHEREAS, the defendant in the above-entitled action has moved this Court for further time within which to prepare, present and have settled his Bill

of Exceptions in the above-entitled action, and in that behalf one of the attorneys for the defendant has filed an affidavit showing the reasons and causes therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED that the time for the preparation, presentation and settlement of the Bill of Exceptions in the above-entitled action shall be, and the same is, hereby extended until the 25th day of August, 1916.

Dated Fairbanks, Alaska, April 5th, 1916.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 514.

[Endorsed]: Original. No. 708-Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America, vs. W. H. Wooldridge. Order Extending Time for Preparation, Presentation, and Settlement of Bill of Exceptions. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 14, 1916. J. E. Clark. By Sidney Stewart, Deputy. [75]

[Title.]

Minutes of Court—April 4, 1916.

Order Continuing Time for Sentence.

Now, at this time, came R. F. Roth, United States Attorney and Harry E. Pratt and Reed W. Heilig, Assistant United States Attorneys in behalf of the Government; came also the defendant in the custody of the United States Marshal with his attorney Bion A. Dodge, and this being the time heretofore fixed

for the pronouncement of judgment and sentence upon the defendant herein,

Now, upon the Court's own motion, it is ordered that the time for pronouncing judgment and sentence upon the defendant herein be and the same hereby is continued to 10 o'clock A. M. Saturday, April 8th, 1916.

CHARLES E. BUNNELL,
District Judge. [76]

[Title.]

Judgment.

Now, at this time, to wit, April 8th, one thousand nine hundred and sixteen, the same being one of the regular February, 1916, term days of this court, this cause came on regularly for the pronouncement of judgment and sentence of this court upon the defendant, W. H. Wooldridge. The defendant appeared personally and by his attorneys, Bion A. Dodge and Thomas A. Marquam, and the plaintiff, the United States of America appeared by its District Attorney, R. F. Roth and Assistant District Attorney, Reed W. Heilig.

It appears to the Court and the Court so finds that the defendant was duly and regularly indicted by a regular and lawful Grand Jury for the Fourth Judicial Division, Territory of Alaska, for the regular February, 1916, term of this court, upon the 18th day of February, 1916, in Count I of said indictment of the crime of rape, alleged therein to have been committed upon the 23d day of December, 1914, at Fair-

banks, Alaska, upon one Laura Herington, a female child of the age of thirteen years, he the said Wooldridge being then and there over the age of twenty-one years; in Count II of said indictment of the crime of attempt to commit rape, alleged therein to have been committed on the 14th day of February, 1916, in the Town of Fairbanks, Fairbanks Precinct, Territory of Alaska, upon one Laura Herrington, a female child of the age of fourteen years, he, the said W. H. Wooldridge, being then and there over the age of twenty-one years. [77]

It further appears to the Court that the defendant was duly and regularly arraigned upon said indictment and upon the 23d day of February, 1916, duly and regularly plead not guilty thereto, and upon the 6th day of March, 1916, the same having been duly and regularly appointed as the trial day for this cause, he appeared in court with his attorneys aforesaid, and upon the 6th, 7th, 8th, 9th, 10th, 11th, 13th, and 14th days of March, 1916, a jury of twelve men were duly and regularly impaneled and sworn, evidence introduced upon behalf of plaintiff and defendant, arguments of counsel had, and the jury duly instructed by the Court, as to the law in the case. That upon the 14th day of March, 1916, said jury retired to consider their verdict and upon the same day returned their verdict, which was and is as follows: “[Title.]

Verdict.

We, the jury in the above-entitled action, duly impaneled and sworn, do find the defendant not guilty of the crime of rape charged in count I of the indict-

ment, and do find the defendant guilty of the crime of attempt to commit rape charged in count II of the indictment.

Fairbanks, Alaska, March 14, 1916.

L. J. HEACOCK,

Foreman."

That thereafter, defendant filed motions in arrest of judgment and for a new trial, which were, upon the 30th day of March, 1916, duly and regularly overruled and now upon this 8th day of April, 1916, the same having been heretofore regularly designated as the day for the pronouncement of the judgment and sentence and defendant and his counsel having been asked if there was any reason why judgment should not be pronounced, and the Court being fully advised upon the subject.

IT IS ADJUDGED that the defendant, W. H. Wooldridge, is not guilty of the crime of rape as charged in the Count I of said indictment, [78] but is guilty of the crime of attempt to commit rape, as charged in Count II of said indictment, and in accordance with the verdict of said jury, and it is the judgment and sentence of the Court that the said defendant by reason of the above, be confined in the United States penitentiary at McNeil's Island, County of Pierce, State of Washington, for a period of six years, and the United States Marshal is directed to deliver said defendant to said penitentiary for the execution of this sentence.

Dated at Fairbanks, Alaska, this 8th day of April, 1916.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 496.

[Endorsed]: No. 708. In the District Court of the United States for the Territory of Alaska. United States of America vs. W. H. Wooldridge. Judgment and Sentence. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 8, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [79]

[Title.]

Bill of Exceptions.

BE IT REMEMBERED that this cause came on regularly for trial in the above-entitled court, at 10 o'clock A. M., March 6, 1916, Honorable Charles E. Bunnell, Judge of said court, presiding. United States Attorney R. F. Roth, and Assistant United States Attorney Reid W. Heilig, appearing as attorneys for the Government, and B. A. Dodge and Thomas A. Marquam, appeared as attorneys for defendant. Proceedings were regularly taken to impanel a jury; and during all recesses and continuances while the jury was being impaneled, the jurors in the box were kept in the charge of bailiffs sworn in that behalf. On Wednesday, March 8, 1916, a jury of twelve men having been duly impaneled, were duly sworn to try the case. The defendant was present in court during all the proceedings and taking of testimony at the trial; and the jury, after being

sworn to try the case, were kept together in charge of the bailiffs. After the swearing of the jury, an opening statement was made on behalf of the Government by R. F. Roth, and thereupon Mr. Thomas A. Marquam made an opening statement on behalf of the defendant, whereupon the following proceedings were had and testimony was taken: [80]

[Testimony of Laura Herrington, for Plaintiff.]

LAURA HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name?

Mr. DODGE.—Wait a minute. Now, if the Court please, we object to the introduction of any testimony whatever under this indictment or the two counts thereof, for the reason that the purported facts set forth in the indictment in Count I do not constitute a public offense; that the facts set forth in Count II do not constitute a public offense.

(By order of the Court, the jury, after being admonished as usual not to talk about the case, etc., withdraw in charge of the bailiffs; the motion is argued; and at 25 min. past 12 M. the jury come into court, and the Court takes a recess until 2 P. M., and the jury, after being admonished as usual, withdraw in charge of the bailiffs. Court reconvenes at 2 P. M.; the jury, the defendant and his attorney and the District Attorney are present, and again, by order of the Court, the jury, after being admonished as usual, retire in custody of the bailiffs, and

(Testimony of Laura Herrington.)

the argument is resumed, and, having been concluded, the jury, at 3 P. M., come into court, and thereupon the Court overruled the objection, and defendant asks and is granted an exception to said ruling, and the trial is resumed.)

(By Mr. ROTH.)

Q. What is your name?

A. Laura Herrington.

Q. Where do you live? A. Fairbanks.

Q. Whereabouts in Fairbanks do you live? What street do you live on? A. Second Avenue, I think.

Q. What part, the upper or lower part of town?

A. Lower part.

Q. What is your father's name? [81]

A. George Herrington.

Q. Do you know where you were born?

A. In Circle City.

Q. How old are you? A. Fourteen.

Q. When is your birthday? A. 3d of August.

Q. How old will you be your next birthday?

A. Fifteen.

Q. Where were you living last Christmas a year ago? Where was your home then?

A. In Ester City.

Q. What was your father's business at that time?

A. He owned a saloon there.

Q. What is you mother's name?

A. Mrs. Herrington.

Q. Do you know her first name? A. Exina.

Q. Have you any sisters? A. Yes.

Q. Have you a sister younger than yourself?

(Testimony of Laura Herrington.)

A. Yes.

Q. What is her name? A. Lena.

Q. Have you a sister older than yourself?

A. Yes.

Q. What is her name? A. Louise Mary.

Q. Have you more than one older than yourself?

A. Yes. [82]

Q. What is the other's name?

A. Louise and Catherine.

Q. Where were you last Christmas a year ago?

A. I came into town.

Q. Who came into town with you?

A. Catherine.

Q. Your sister Catherine? A. Yes.

Q. Did anyone else come in with you?

A. Not that I remember of.

Q. Was anyone else in town during—that is, of your family while you were in here?

A. There might have been. I don't remember.

Q. Did your mother come to town at that time?

A. What do you mean?

Q. Did your mother come to town from Ester at the time that you were in here on that trip last Christmas a year ago?

A. Yes, a week before Christmas.

Q. She came in a week before Christmas, you say?

A. Yes, sir.

Q. How long did she stay here at that time, do you know? A. Until after New Years, I think.

Q. How long did you stay here?

A. I stayed as long as mama did.

(Testimony of Laura Herrington.)

Q. You went back with your mother? A. Yes.

Q. When did you come in, before Christmas?
How long were you in here before Christmas?

A. A week before Christmas. [83]

Q. Did you come in at the same time that your mother did? A. Yes.

Q. You came in at the same time, a week before Christmas, did you say? A. Yes.

Q. Do you know Mr. Wooldridge, the defendant here, the gentleman sitting beside Mr. Dodge there?

A. Yes, sir.

Q. How long have you known him Laura? Is it a long time? A. Yes.

Q. Did you see Mr. Wooldridge at the time that you were in here from Ester on that trip, the holidays, last Christmas a year ago, did you see Mr. Wooldridge? A. Yes.

Q. Now, with reference to Christmas day, when was it that you saw Mr. Wooldridge?

A. I don't understand.

Q. Was it before Christmas that you saw him, or after Christmas? A. Before.

Q. How long before, Laura?

A. Two or three days before.

Q. Where did you see him?

A. By the Glass Block.

Q. Do you know the name of the street? Whose store is the Glass Block? A. Gordon's.

Q. Was there anyone with you at the time you saw Mr. Wooldridge that time? A. No.

(Testimony of Laura Herrington.)

Q. Was there anyone with Mr. Wooldridge?

A. No. [84]

Q. Did Mr. Wooldridge talk to you? A. Yes.

Q. What did Wooldridge say to you?

A. He asked me to go for a walk with him.

Q. What did you say?

A. I said I didn't want to go.

Q. Then what did he say after that?

A. He asked me again.

Q. Then what did you say? A. I went.

Q. Did you tell him you would go? A. Yes.

Q. Did you go with him? A. Yes.

Q. Where did you go?

A. Up by the Eagle Hall way.

Q. How is that?

A. Up the Eagle Hall way.

Q. To what place did you go?

A. To the cabin by his house.

Q. Was there anybody else in the cabin?

A. No.

Q. Did you go into the cabin? A. Yes.

Q. Now, when you and Mr Wooldridge got into the cabin was there anyone else in the cabin that you know of besides you and Mr. Wooldridge?

A. No.

Q. What time of the evening was this, as nearly as you can fix the time? A. About seven-thirty.

[85]

Q. When you got into the cabin there, what did Mr. Wooldridge do,—what is the first thing that he did?

(Testimony of Laura Herrington.)

A. He laid his coat on the floor, on the ground, rather.

Q. On the ground. A. Yes.

Q. What kind of a coat did he have?

A. A fur coat.

Q. After he had laid the coat on the ground, what did you do? A. I laid on it.

Q. Did you unbutton any part of your clothes?

A. Yes.

Q. Did you unbutton your drawers?

(Defendant objects as leading and suggestive. Sustained.)

Q. What did you do, Laura, with reference to your drawers,—what did you do?

A. I unbuttoned them.

Q. Then what did Mr. Wooldridge do? Just speak up, Laura, and tell the jury what Mr. Wooldridge did. A. He laid on me.

The COURT.—What is the answer?

A. He laid on me.

Mr. ROTH.—Q. Well, when he laid on you, did he do anything to you? A. Yes.

Q. What did he do? (No answer.) Do you know what sexual intercourse means? (No answer.) State whether he had sexual intercourse with you.

(Defendant objects as leading and suggestive. Sustained.)

Q. State just what he did, Laura. (No answer.) Just state what he did.

The COURT.—Q. Do you understand Mr. Roth's question? [86] A. Yes.

(Testimony of Laura Herrington.)

Q. Answer the question. A. Yes.

Mr. ROTH.—Q. I ask you— The Court sustained that objection, Laura, and it is necessary for you to state what he did.

A. Well, I can't explain what he did.

Q. Do you mean that you are ashamed to explain it, or that you don't know how to explain it.

(Defendant objects as leading and suggestive. Overruled. Defendant asks and is given an exception.)

Q. What is it?

A. I said I was ashamed to, and I don't know how to explain it.

Q. Now, Laura, tell this jury—look at this jury and tell this jury whether or not Mr. Wooldridge at that time when he was laying on top of you in that cabin, as you have stated, had sexual intercourse with you?

(Defendant objects as irrelevant, incompetent, immaterial in the form it is put, because it is leading and suggestive.)

The COURT.—Laura. You may explain to the jury what happened there.

A. I can't explain.

Mr. ROTH.—Q. Do you know, Laura, what it means for a man to spend?

(Defendant objects as leading and suggestive, and, the term not having been used by this witness, it is entirely leading and suggestive. Objection sustained.)

Q. Laura, will you please—will you please tell this

(Testimony of Laura Herrington.)

jury what Mr. Wooldridge did when he was laying on top of you there?

A. I told you I can't explain.

Q. Because we are at a standstill now. Can't you tell this jury, whether you explain it or not—can't you tell the jury what he did when he lay on top of you? (No answer.) Won't you do that, Laura?

[87] A. I told you I can't.

Q. Tell this jury whether or not Mr. Wooldridge at that time inserted his penis into your body.

(Defendant objects as leading and suggestive, and putting the question (means answer) into the witness' mouth. The Court states it is leading, but overruled the objection. Defendant excepts and is allowed an exception.)

A. Yes.

Q. Did you say "Yes" or what? A. He did.

(Defendant moves to strike the answer, because it is gotten from the witness by a leading and suggestive question. Motion denied. Defendant asks and is given exception.)

Q. What, if anything—or did you see—Was there any stain on your clothes after that?

(Defendant objects as leading and suggestive. Objection sustained.)

Q. State, Laura, whether or not there was anything on your drawers after you left there.

A. I don't remember.

Q. Laura, state what, if anything, Mr. Wooldridge gave you at that time? A. Yes.

(Defendant objects as irrelevant, and immaterial,

(Testimony of Laura Herrington.)

the objection is overruled.)

Q. What did he give you? A. Two and a half.

Q. Did Mr. Wooldridge make you any further promise at that time?

(Defendant objects as irrelevant, incompetent and immaterial. Sustained.)

Q. Did Mr. Wooldridge say anything at that time to you when he gave you the two dollars and a half?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant asks and is given an exception.)

Q. Did you understand the question, Laura?

[88] A. What question?

Q. Did Mr. Wooldridge say anything to you at all at the time he gave you the two dollars and a half?

A. I told him two and a half wasn't enough.

Q. What did he say?

A. He would give me a dollar more.

Q. He said he would give you a dollar more. Where did you go from there?

A. Up to my aunty's.

Q. Who went with you? A. Wooldridge.

Q. How far did he go with you? A. Part way.

Q. Who was your aunty? A. Mrs. Morency.

Q. Where were you stopping at that particular time in town? A. At Mrs. Morency's.

Q. Are you acquainted with a man by the name of Ed Hall? A. Yes.

Q. Did you see him that night?

(Defendant objects as irrelevant, incompetent and

(Testimony of Laura Herrington.)

immaterial. Objection overruled. Defendant asks and is given an exception.)

A. Yes.

Q. Where? A. Aunty's.

Q. How long after you got there?

A. I don't remember.

Q. Did you have a talk with Mr. Hall at that time?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts, and exception allowed.) [89]

A. Yes.

Q. Just tell this jury what you told Mr. Hall, if anything, about Mr. Wooldridge.

(Defendant objects as irrelevant, incompetent, immaterial, hearsay; no evidence when the conversation took place; no evidence to show it was in the nature of a confession; that the inference from the evidence is that it was an ordinary conversation that happened at some indefinite time after the alleged commission of the offense; for the further reason that it has not been shown this far that Ed Hall was the first person she saw or came in contact with after the commission of the alleged offense; for all these reasons defendant objects to it as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts and is given an exception.)

A. Well, I told him I was out that night with him.

Q. I didn't hear you?

A. I told him I was out that night with him.

Q. With who? A. Mr. Wooldridge.

(Testimony of Laura Herrington.)

(Defendant moves to strike answer for all the reasons already given, as it is now apparent that it is irrelevant, incompetent and immaterial. Motion denied. Defendant asks and is given an exception.)

Q. What else did you tell him, if anything?

A. I told him what he did.

Q. As you have related it here?

(Defendant objects as irrelevant, incompetent, immaterial, calling for a conclusion of the witness, leading and suggestive. Objection overruled. Defendant excepts and is allowed an exception.)

A. Yes.

Q. When did you—How soon after that did you see your sister Catherine?

A. I don't remember exactly.

Q. Well, I am not asking you about "exactly" Laura.

A. It might have been a day or so. I don't know.

Q. Where was your sister employed at that time, I mean, your sister Catherine, at that time? [90]

A. She was working for Mrs. Running.

Q. The first time that you saw your sister Catherine after this thing occurred, did you have a talk with her about this?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. No.

Q. I don't know— Please read that question again. I want to see if she understood the question.

(Testimony of Laura Herrington.)

(Defendant objects to the re-reading of the question. Overruled. Question read as follows: "The first time that you saw your sister after this thing occurred, did you have a talk with her about this?")

Q. Did you understand the question? A. Yes.

Q. Did you have a talk with your—the first time you saw her, with your sister Catherine about Wooldridge, in the way you have related it about the money?

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. No.

Q. How is that? I don't understand what the witness says.

The COURT.—Q. What is the answer.

A. No.

Mr. ROTH.—Q. Did you ever have a talk with your sister Catherine about this affair that occurred between you and Mr. Wooldridge in that cabin?

(Defendant objects as irrelevant, incompetent and immaterial. Defendant excepts. Objection overruled. Exception allowed.)

Q. Answer that.

A. When I met her on my way—(interrupted).

Q. Where did you meet her?

A. She was going over to Running's.

Q. How long was that after you met Mr. Wooldridge, do you think, in the cabin out there? [91]

A. Two or three days. I don't remember.

Q. You don't remember exactly. A. No.

(Testimony of Laura Herrington.)

Q. What did you say to her at that time about Mr. Wooldridge, if anything?

(Defendant objects as incompetent, irrelevant, immaterial and hearsay. Overruled. Defendant excepts. Exception allowed.)

A. I forget what you said.

Q. What did you say to Catherine at that time about Mr. Wooldridge?

(Defendant further objects to it as asking for a self-serving declaration. Same ruling and exception.)

A. I showed her the money.

(Defendant objects and moves to strike the answer as not responsive, and as irrelevant, incompetent and immaterial. Objection overruled and motion denied. Defendant excepts and is allowed an exception.)

Q. What did you say to her when you showed the money, if anything?

A. I told her Mr. Wooldridge gave it to me.

(Defendant objects to the question and answer, and moves to strike the question and answer, as irrelevant, incompetent and immaterial. Objection overruled and motion denied. Defendant excepts, and is allowed an exception.)

Q. Did you see Mr. Wooldridge down at your house where you now live around about the 12th or 13th of last month upon the occasion of his coming to your house about potatoes?

(Defendant objects as incompetent, irrelevant, im-

(Testimony of Laura Herrington.)

material, leading and suggestive. Objection sustained.)

Q. Did you see Mr. Wooldridge at your house last month? A. Yes.

Q. Where were you when he first came into the house? A. Upstairs.

(Defendant objects as to indefinite. Sustained.)

Q. Where was Mr. Wooldridge when you saw him at your house last month? [92]

A. What do you mean?

Q. Where were you in the house when you saw Mr. Wooldridge? A. I was upstairs when he came.

Q. Did you come downstairs? A. Yes.

Q. Did you have a talk with Mr. Wooldridge?

A. Yes.

Q. What did Mr. Wooldridge say to you?

(Defendant objects to further questions until the time is fixed, and Mr. Roth states he will fix the exact date, not by this witness, but by other witnesses.)

A. He said I was growing.

Q. And then what did you say to him?

A. I don't remember what I said.

Q. What else was said then at that time that you remember, by either one of you?

A. He talked to mama then.

Q. Well, did you talk to him any more there?

A. Yes.

Q. What was said?

A. I talked about the dollar he owed me.

Q. What did he say?

A. He said that I said it was all right.

(Testimony of Laura Herrington.)

Q. Then what did he say?

A. Then I said, "Well, I need the dollar."

Q. All right. Then, what did he say when you said you needed the dollar?

A. I don't remember.

Q. Laura, upon this subject now—upon the subject of your former meeting with him, was there anything said on that subject?

A. We made arrangements to meet. [93]

Q. I know. But was there anything said on this subject; the time you met him up in that cabin? Did he make any reference to the former time, at that time?

(Defendant objects as irrelevant, incompetent and immaterial. Overruled. Defendant excepts, and is allowed an exception.)

A. Yes.

Q. What was it that he said there? A. Yes.

Q. What did he say to you? Give the exact language now. I want the exact language.

A. He said the cabin was torn town.

Q. What else did he say—the exact language?

(Defendant objects as assuming that there was anything else said. Sustained.)

Q. State anything else that was said there, Laura, and, if anything else was said, give the exact language of it; just what he said.

A. He said we could meet some other place.

Q. But upon the subject of the time that you had met before. I want all that was said upon the subject of the time that you had met in that cabin down

(Testimony of Laura Herrington.)

there before; with reference to what was done down there, I want the exact language of what he said, Laura.

(Defendant objects as an attempt to cross-examine his own witness. Overruled. Defendant excepts. Exception allowed.)

Q. Now, Laura, please give that full conversation.

A. Well, I told him—(interrupted).

(Defendant objects as assuming that there was something else said, and as assuming that what she has already said was not the full conversation. Overruled. Defendant excepts and is allowed an exception.) [94]

A. Well, he told me the cabin was torn down and we couldn't go there, but meet some place else, and I said it could be at my house.

Q. Now, upon the subject of the "piece" that you had there—(interrupted).

(Defendant objects as putting the question in such a leading and suggestive way, as putting the words in the mouth of the witness; and Mr. Roth withdraws the question.)

Q. I will change the question. Upon the subject of the former sexual intercourse that you had with him down at the cabin, did he say anything about that, on that subject?

(Defendant objects that the question is leading and suggestive, taken together with the question asked just before. Objection overruled. Defendant excepts and is allowed an exception.)

Q. Answer the question if you can remember it.

(Testimony of Laura Herrington.)

A. Well, I told you I said that we could meet at my house.

Q. You didn't understand the question.

The COURT.—Q. Was there anything else said?

A. He said he would come.

Mr. ROTH.—But on the subject of the sexual intercourse that you had had with him down at the other cabin, was there anything said?

(Defendant objects as leading and suggestive, already having been asked, and improperly put. Objection overruled. Defendant excepts. Exception allowed.)

A. If there was, I have forgotten.

Q. Well, you stated that he said that he would meet you at your home, did you? A. Yes.

Q. When? A. At seven-thirty.

Q. That same day? A. Yes. [95]

Q. Who did you tell about that, if anybody, immediately after you made that appointment?

A. My mother.

Q. Did you see Mr. Wooldridge again that same day, I mean before noon? A. Yes.

Q. How long after this time that you made the appointment with him was it that you saw him again at the house there?

(Defendant asks that the time of day be fixed when this conversation occurred.)

Q. What time was it that Mr. Wooldridge came to the house there that day, according to your best recollection? A. It was about ten o'clock.

Q. And then about how long after that was it that

(Testimony of Laura Herrington.)

he came back? A. Half an hour.

Q. Did you have a talk with him when he came back? A. No.

Q. Where did he go in the house when he came back? A. He didn't come in the house.

Q. Did he talk to anyone? A. Yes.

Q. Who did he talk to? A. My mother.

Q. Where did they talk? A. In the cache.

Q. Do you know whether or not they went upstairs? A. That was when he was there first.

Q. That was when he was there first. A. Yes.

Q. Do you know whether or not Mr. Wooldridge gave your mother [96] anything when he came back there in a half hour?

A. My mother told me—(interrupted).

DEFENDANT'S ATTORNEY.—Just a moment.

Q. I don't care what your mother told you. Did your mother give you anything? A. Yes.

Q. What did she give you? A. A dollar.

Q. Did you see Mr. Wooldridge again that same day or evening?

A. I saw him in the evening.

Q. Tell this jury whether or not, when you made the arrangement for that meeting with Mr. Wooldridge, any signal was arranged? A. Yes.

(Defendant objects as leading and suggestive. Overruled. Defendant excepts, and is allowed an exception.)

Q. Just state what signal was arranged.

A. He was to whistle.

Q. How many times, or was there anything said

(Testimony of Laura Herrington.)

about that? A. Twice.

Q. Whistle twice. Now, in the evening before seven-thirty o'clock did anybody come there before seven-thirty o'clock—anybody come to the house?

A. Yes.

Q. Who came? A. Marshal Miller.

Q. Who else? A. And Marshal Berg.

Q. Do you know of anybody else?

A. Not that I remember. [97]

Q. Tell this jury what, if anything, you were to do upon hearing that whistle—upon hearing that signal.

(Defendant objects as irrelevant, incompetent and immaterial.)

Q. I mean in response to the signal.

(Defendant objects for the reason that there has been no evidence that she was to do anything. Objection overruled. Defendant excepts. Exception allowed.)

A. I was to raise the curtain.

Q. State what you did do, if anything, when you heard the whistle.

A. I raised the curtain before I heard the whistle.

Q. How many times did you hear the whistle?

(Defendant objects as irrelevant, incompetent and immaterial, for the reason that there is no evidence about what whistle she heard, or whose whistle she heard, or anything about it; that is too indefinite and uncertain. Objection overruled. Defendant excepts. Exception allowed.)

A. (No answer.)

Q. How many times did you hear the whistle?

(Testimony of Laura Herrington.)

A. About twice.

Q. Twice. Did Mr. Wooldridge come in immediately after he whistled, or after the whistle? I wish to strike that out. Did Mr. Wooldridge come in immediately after you heard the whistle?

(Defendant objects as leading and suggestive. Overruled. Defendant asks and is allowed an exception.)

The COURT.—The question is: Did Mr. Wooldridge come in immediately after you heard the whistle. A. No.

Mr. ROTH.—Did he come in there at all that evening? A. Yes.

Q. What time did he come in?

A. Eight-thirty. [98]

Q. What time, if any, did the men who were in the house go out, that had been in there before?

A. About a quarter after eight.

Q. What was said between you and Mr. Wooldridge when he came in there at eight-thirty?

A. Well, he said he was afraid to come before that.

Q. Well, what else did he say?

A. He asked me for what he wanted.

Q. What did you say?

A. I told him he should have come at seven-thirty.

Q. What else was said then, if you remember?

A. I don't remember.

Q. State whether or not anyone came in there, or came to the door, while you were there with Mr. Wooldridge at that time.

A. Marshal Miller and Marshal Berg.

(Testimony of Laura Herrington.)

Q. What did Marshal Miller say to you when he came there? A. He asked if daddy was home.

Q. What did you say?

A. I told him to sit down.

Q. What did he say—Marshal Miller?

A. I didn't hear what he said.

Q. Did he go in? Did he stop at all?

A. He stood at the door.

Q. How long did he stand there?

A. A minute or two.

Q. And what did he do after he stood there a minute or two? A. He went out again.

Q. What was said between you and Mr. Wooldridge after Miller left there?

A. He went out right away. [99]

Q. What was said between you at the time?

A. I told him to get out.

Q. Did he say anything to you? Was there anything said about who this was that came there?

A. He said he didn't know.

Q. You told him to get out? A. Yes.

Q. Did he go? A. Yes.

Q. How long after Mr. Miller left was it that Mr. Wooldridge left? A. Right after they left.

Q. Did you see Mr. Miller again that night?

A. Yes.

Q. How long after Mr. Wooldridge left was it that you saw Mr. Miller again?

A. I don't remember now.

Q. Do you think it was as much as half an hour?

A. I don't know.

(Testimony of Laura Herrington.)

Q. After Mr. Miller left the second time, did you see Mr. Wooldridge again? A. Yes.

Q. How long was that, do you think, after Mr. Miller—Marshal Miller left the second time, that Mr. Wooldridge came back again?

A. A little while after.

Q. Did he come inside of the house? A. Yes.

Q. Did he sit down?

A. Well, he stood up awhile; then I begged him to sit down, so he did. [100]

Q. What was the conversation that took place there that time that he was there?

A. That I could meet him again.

Q. Just state what it was. What did he say?

A. He said he could get a key from Mr. Rose.

Q. Did he say what Mr. Rose? A. Yes.

Q. What did he say? A. The bicycle man.

Q. What did you say?

A. I told him I didn't like to go there.

Q. Then what did he say?

A. He said he couldn't come here again. He was afraid to.

Q. When he said that, what did you say, if anything? A. I said I would meet him there then.

Q. What time was fixed? A. Eight o'clock.

Q. Of what day? A. The next day.

Q. Eight o'clock in the morning or eight o'clock in the evening? A. In the evening.

Q. After you had made that arrangement and that was said, where did Mr. Wooldridge go? Did he leave the house? A. Yes.

(Testimony of Laura Herrington.)

Q. Do you know about what time it was he left?

A. No.

Q. Did you tell anybody about this appointment that you had made to meet Mr. Wooldridge at Rose's bicycle shop?

A. My daddy and mamma.

Q. When did you tell them? [101]

A. When they came home.

Q. That same evening? A. Yes.

Q. Did you go to Rose's bicycle store the next evening?

A. Yes.

Q. Who went with you, if anyone?

A. I went alone.

Q. Did anybody go with you part of the way?

A. My daddy.

Q. How far did he go with you?

A. To the First National Bank.

Q. What time did you get there?

A. I don't know.

Q. Were there any lights in there when you got there.

A. There was a light in the back room.

Q. Who was in there?

A. Mr. Rose and Mr. Wooldridge.

Q. Where was Mr. Rose when you went in there; what part of the room did he occupy?

A. The back room.

Q. All right, but where was he in the back room when you got in there?

A. Lying on the bed.

Q. Where was Mr. Wooldridge?

A. Sitting by him.

Q. What was said when you went in there?

A. I think Mr. Rose said, "Hello."

(Testimony of Laura Herrington.)

Q. All right. Now, what else *said* said? Tell everything that occurred while you were in there, Laura.

A. Then Mr. Wooldridge got up and he said he was going for a [102] walk, and Mr. Rose asked him if he was going to take me with him.

Q. What did Wooldridge say then?

A. He said, "No. I will leave Laura for you."

Q. What did Rose say?

A. He didn't say anything more, not that I remember of.

Q. State what occurred right after that?

A. He went out into the other room and stayed there a little while.

Q. Who?

A. Mr. Wooldridge, and then, a little while after, Mr. Rose got up and went out in the other room.

Q. Go ahead.

A. They whispered for awhile. Then Mr. Wooldridge came back and told me to turn out the light and stay there until they came back.

Q. Then what did he do?

A. Went out after I had turned the light out.

Q. Then he went out of the front door, did he?

(Defendant objects as leading.)

Q. Where did he go?

A. Went out to the other room.

Q. All right. Then what is the next thing that you know that occurred?

A. Mr. Rose came back and told me I had better go away for someone was watching me.

(Testimony of Laura Herrington.)

Q. Did you go out of there then? A. Yes.

Q. And where did you go?

A. I went into the other room. [103]

Q. And from there where did you go?

A. Stayed in that room because the marshals came in.

Q. All right. And from there, where did you go?

A. Came up to Marshal Miller's office.

Q. When you got to the marshal's office who was in there?

A. Marshal Miller and the rest of them.

Q. Who were the rest of them that you know of that were there? A. Marshal Miller and Hall—

Q. Frank Hall? A. Yes, Berg, and McMullen.

Q. Mr. Berg. Was Mr. Wooldridge there?

A. Yes.

Q. Was Mr. Miller there, Chief Deputy Miller?

A. Yes.

Q. Was Mr. Rose there at that time? A. Yes.

Mr. ROTH.—You may cross-examine.

(Here the Court takes a recess until 3:50 P. M. to-day, and the jury withdraw after being admonished as usual by the Court; and, after the recess, and at 3:50 P. M., the defendant and his attorneys and the district attorney and the jury are present, and the trial is resumed.)

LAURA HERRINGTON, on the stand, resumes her testimony.

Cross-examination.

(By Mr. MARQUAM.)

Q. Laura, you say you were born in Circle City?

A. Yes, sir.

(Testimony of Laura Herrington.)

Q. And do you remember when that was? I don't mean that you remember the incident yourself, but do you remember, from your family talking about it, when it was—what year it was that you were born?

A. I think in 1902. [104]

Q. Do you remember how long you lived in Circle City? A. No, sir, I don't.

Q. Do you remember when you first came over to Fairbanks? A. No.

Q. You don't know how old you were when you first came to Fairbanks? A. No.

Q. I presume you don't know how you came over, do you? A. I guess I came on a boat.

Q. You think you came on a boat? A. Yes.

Q. Your family had lived there up to that time, up at Circle City; your father and mother had lived there and you had lived with them?

A. Yes.

Q. And when you came over, you all came over together. A. I guess so.

Q. I suppose you have gone to school, have you not? A. Yes.

Q. Do you remember when you started in to school? A. No.

Q. Do you remember how long you have been going to school? A. No.

Q. Are you going to school now? A. No.

Q. How long since you have been going to school?

A. I stopped this year.

Q. After you started in? [105]

A. After Catherine started for Tofty I stopped.

(Testimony of Laura Herrington.)

Q. How long ago was that? A. I don't know.

Q. Well, was it right recently?

A. Right lately. Yes.

Q. Within a month, or about that time?

A. Yes, about that time.

Q. Did you stop of your own accord, or were you taken out of school?

A. Mamma was sick, so I had to stop.

Q. Up until that time, after you started in to school you continued to go up until something in the neighborhood of a month ago.

A. Well, I went for a few days, and then I stopped again.

Q. What I mean is, have you been regularly to the public school here after you once started in; every year since you started in, have you been going to school?

A. Yes, only one year, that is when we lived out on Ester.

Q. You didn't go to school then? Was there a school at Ester? A. No.

Q. You didn't go to school there? A. No.

Q. You say that you have known Mr. Wooldridge a long time. What do you mean, Laura, by "a long time"? A. Many years.

Q. How old were you when you first knew him?

A. I don't know.

Q. As long as you can remember anything can you remember of knowing Mr. Wooldridge?

A. I went to school with Catherine when he was the school teacher. [106]

(Testimony of Laura Herrington.)

Q. And since that time you have known him?

A. He might have known me before.

Q. But at least since that time. Now, this incident that you were telling the jury about when Mr. Roth was questioning you, about meeting Wooldridge near the Glass Block was when? What year was that? A. In 1913. I think that was it.

Q. In 1913? A. I am not sure.

Q. What makes you think it was 1913?

A. I say: I wasn't sure.

Q. You think that is it, don't you?

A. Yes. I think it.

Q. What makes you think that? Why do you fix 1913 as the year? A. I don't know.

Q. It might have been some other year?

A. No.

Q. Then, it must have been 1913?

A. It must have been.

Q. It must have been? Have you any way by which you arrive at that conclusion and remember that it was 1913? You know what year this is?

A. Yes.

Q. This is what? A. 1916.

Q. And you think that you are quite sure that it was 1913 that this meeting with Mr. Wooldridge occurred? A. Yes.

Q. How long before that had it been that you had seen Mr. Wooldridge? [107]

A. How long before?

Q. Yes. Before the time that you met him near the Glass Block?

(Testimony of Laura Herrington.)

A. I don't believe I saw him before that.

Q. You must have seen him some time before that?

A. Oh. We just came in from Ester then.

Q. I understand, Laura, but I mean before that, whether it was a year or two years or three years, or whatever time it might have been; how long before the time you saw him near the Glass Block was it that you had seen him previous?

A. I don't remember.

Q. Have you no idea? A. No.

Q. It might have been a month.

A. I don't know.

Q. How long had you been out to Ester?

A. A year.

Q. And had you ever been in from Ester to town here during that time? A. Yes.

Q. Were you there a full year?

A. Yes. One whole year.

Q. A full year, and I presume you came in often, did you not? A. Yes.

Q. During any of those trips that you came into town, did you see him?

A. Not that I remember of.

Q. So then it must have been, if that is the case, a year or more since you had seen Mr. Wooldridge. Is that true?

A. It must have been. I don't remember. [108]

Q. You said you didn't know what street this was on, in answer to Mr. Roth's question. Don't you know street the Glass Block is on? A. Cushman.

(Testimony of Laura Herrington.)

Q. You knew that, didn't you?

A. Well, I think I said it, didn't I?

Q. I understood you to say you didn't know what street it was on? A. No. I said it.

Q. You know perfectly well that the Glass Block is on Cushman Street? You know most of the streets in town, don't you? A. No, sir. I don't.

Q. Well, a good many of them. You know Cushman Street, don't you? A. Yes. I know that.

Q. Where do you live? A. On Second.

Q. And what? A. That is all I know.

Q. Is that where you are living now, on Second Street? A. Yes.

Q. Which part of town?

A. The lower part.

Q. Near what place, that we might all know, if you don't know the street?

A. Do you know where Samson's live?

Q. No. A. Then I can't tell you.

Q. Do you know the Orr barn?

A. Yes. I know that. [109]

Q. Is it anywhere near there?

A. The Orr barn is below our place.

Q. How far below? A. I don't know.

Q. You have been down there?

A. I have been past there.

Q. Couldn't you give the jury some idea about where your home is?

A. I told you it was on Second.

Q. Second is quite long, a long street. How far this side of the Orr barn do you live?

(Testimony of Laura Herrington.)

A. I don't know.

Q. What place or building that is well known on Front Street down below there would be opposite your place? A. I didn't look to see.

Q. I know you didn't look especially for the purpose, but you have been down to the river from your house a good many times to Front Street?

A. No. I have been on Front Street.

Q. Don't you know, if you go down Front Street on your way home, what place you have to turn up away from the river to get to your house?

A. Yes. I know that.

Q. What places are on the corner where you turn around to go up? A. I don't know.

Q. Do you have to go beyond the Times office before you turn up, in order to go up to your place?

A. I don't take that street to go home.

Q. If you went down Front Street, were going down Front Street [110] until you got opposite to the house, would you turn up before you got to the Times office or would you go beyond the Times office?

A. I wouldn't go that way. I always pass the courthouse.

Q. I don't mean that. I am trying to find out and let this jury know where this house is that you have been telling about, and you have told us it is on Second Street and somewhere down in the lower part of town, and we want to know more definitely, if you can give its location, where it is.

A. Do you know where Snowey's live?

(Testimony of Laura Herrington.)

Q. No. I don't. But we all know where the Times office is.

A. I know you do, but we don't live around there.

Q. Is it further down than the Times?

A. Yes.

Q. About how far? A. I didn't measure.

Q. Don't you know how many streets it is?

A. I don't remember. I didn't count them.

Q. That is as near as you can give us to a description of the location of your home? How long have you lived in that house, Laura?

A. We have lived there quite a while.

Q. Have you ever lived in any other house in the town? A. Yes.

Q. Where was that?

A. Down on Wendell Avenue.

Q. That was a long time ago?

A. That was when we moved in from Ester.

[111]

Q. When did you move in from Ester; what year? A. I don't remember.

Q. Was it in 1914? A. 1915, I think.

Q. 1915 you moved in from Ester? You were in for the holidays, were you, the time you came in from Ester? A. Do you mean the carnival?

Q. No. I mean the Christmas holidays.

A. Yes.

Q. That is what you came in for? A. Yes.

Q. Your home was in Ester at that time?

A. Yes, sir.

Q. Where did you stop when you came in to town?

(Testimony of Laura Herrington.)

A. My aunty's?

Q. Who was your aunty? A. Mrs. Morency.

Q. You and your mother and your sister stayed there? A. Yes.

Q. Did your father come in?

A. Yes. I think he came in.

Q. Did he stay there too? A. No.

Q. Where did he stay? A. I don't know.

Q. Just the three of you stayed there? A. Yes.

Q. And you came in either the 22d or the 23d, I understood you to say? [112]

A. I never said that.

Q. What did you say?

A. I never mentioned no date.

Q. What date was it? I thought you said it was about a week before Christmas, wasn't it?

A. Yes.

Q. When your mother came in and you came in with her; and the date you met Wooldridge was either the 22d or the 23d? A. I don't know.

Q. And it was about seven-thirty o'clock in the evening? A. About that.

Q. And what were you doing there at that time?

A. I was just going up to aunty's.

Q. From where? A. I don't know.

Q. You had been down town? A. Yes.

Q. And you were going home? A. Yes.

Q. Where was Mr. Wooldridge; was he standing there, or walking, when he met you?

A. He was just coming up from the Glass Block, coming up that street.

(Testimony of Laura Herrington.)

Q. He was going up to the Glass Block?

A. Coming up this way. (Motions with her hand.)

Q. Away from the river or towards the river?

A. Out this way (indicating).

Q. Was he coming down town or going away from town? A. He was going up Cushman.

Q. And you were going up Cushman too? [113]

A. Yes. I was going that way.

Q. So then, did you overtake him or did he overtake you? A. He stopped me.

Q. Was he ahead of you while you were walking up, or behind you? A. He was ahead of me.

Q. He saw you and waited for you?

A. He saw me and he stopped.

Q. And waited for you? Was it dark?

A. Yes.

Q. How dark? A. I don't know.

Q. I understood you couldn't tell exactly. But how dark was it? A. Dark enough.

Q. Were the street lights on, burning? A. Yes.

Q. Was the moon shining?

A. I don't know. I didn't look.

Q. What did he say to you first?

A. He asked me to go out for a walk with him.

Q. Did he say what he wanted of you to go out walking with him? A. He didn't mention it then.

Q. He didn't say? Did you ask him what he wanted? A. Not that I remember.

Q. You might have? A. I don't know.

Q. Did you know what he wanted?

(Testimony of Laura Herrington.)

A Yes. I knew what he wanted. [114]

Q. Yes. A. Yes.

Q. How did you know, if he didn't say, or you didn't ask him? A. I knew it.

Q. How did you know, Laura?

A. Well, I knew. That is all.

Q. You just knew? A. Yes.

Q. You knew what he was after; and you knew that and understood that all right, did you?

A. Yes.

Q. You knew all about such things at that time, did you?

A. I don't know. I might have known some things.

Q. How is that?

A. I might have known some things.

Q. So when you said; yes, you would go with him, you knew what you were going for, wherever you were going?

A. Yes. I knew what I was going for.

Q. How were you dressed? A. I don't know.

Q. Don't you have any idea how you were dressed?

A. I had a dress on. I know that.

Q. Oh, yes; sure. But just describe to the jury generally how you were dressed.

A. I don't remember what dress I had on.

Q. Well, did you have anything on besides a dress?

A. A coat and hat.

Q. What kind of a coat and what kind of a hat?

A. I don't remember what coat I had on then.

Q. What did you wear on your feet? [115]

(Testimony of Laura Herrington.)

A. Shoes.

Q. Just leather shoes? A. Arctics.

Q. Overshoes? A. Yes.

Q. What did you have under the overshoes?

A. Shoes.

Q. Did you have leather shoes under the arctics?

A. Yes. I guess you should know that.

Q. We are trying to find out what you remember about this, Laura. Did you have a warm overcoat on?

A. I don't know whether it was warm or not, but it should keep me warm.

Q. It should keep you warm. Is that what you said? A. Yes. That is what I said.

Q. Did you have a hat on or a cap on?

A. A cap.

Q. What kind of a cap? A. Blue.

Q. What color? What material?

A. I don't know. I didn't look.

Q. Can't you give us some idea how you were dressed in that respect?

A. I said it was a blue cap.

Q. Well, it was a knit cap, was it, is that the idea?

A. I don't know.

Q. How was Wooldridge dressed?

A. I didn't notice. I know he had a fur coat on.

Q. What kind of a fur coat?

A. I don't know what kind of skin it was. [116]

Q. What did it look like?

A. It looked like a coat.

Q. What kind of fur? A. I don't know.

(Testimony of Laura Herrington.)

Q. Fur on the outside of the coat or on the inside?

A. I guess you should know that.

Q. Well, that is not material, what I know; it is the question of what you know.

A. Your coat has fur outside too, has it not?

Q. Do you know that? A. Yes. I know that.

Q. Do you know whether it has fur on the inside?

A. I don't know. I never looked.

Q. Then you don't know whether Wooldridge had an ordinary fur coat with the fur on the outside, or whether it was fur-lined?

A. It was fur on the outside.

Q. What kind of a cap did he have on?

A. A fur cap.

Q. Do you remember what kind that was?

A. I know it was a fur cap.

Q. After leaving the Glass Block, where did you go? A. Up towards the Eagle Hall.

Q. After you got to the Eagle Hall, then which way did you go? A. We went up his way.

Q. Which way is that? A. Where he lives.

Q. What street did you go up? You continued going on up the street that the Eagle Hall is on?

[117]

A. We turned the corner.

Q. Which corner? A. I don't know.

Q. Which corner do you mean, Laura?

A. I don't know the streets.

Q. From Eagle Hall, do you mean the corner this side of the Eagle Hall or the other side of Eagle Hall?

A. That side (pointing).

(Testimony of Laura Herrington.)

Q. On the other side. That would be up towards Lacey Street.

A. The way he lives. It might be Lacey. I don't know.

Q. Do you know where he lives.

A. Yes. I know where his house is.

Q. Where was this cabin from his house?

A. On the other side.

Q. Going which way?

A. Going that way (pointing).

Q. Going south, it was on the right-hand side of his house, was it? A. On the right-hand side.

Q. How far from his house? A. Not far.

Q. About how far? A. I don't know.

Q. Did you at that time know where his house was? A. No.

Q. You found out since? A. I found out since.

Q. After you found out since where his house was, where was this cabin?

A. On the right-hand side of his house. [118]

Q. On the right-hand side of his house. Well, facing his house from the street? A. No.

Q. The street that you went out to this cabin,—whichever street it was, if you don't know the name of it—was his house on the left or right-hand side of it? A. On the right-hand side.

Q. Going out to it?

A. His house was standing there, and the cabin was over here (indicating).

Q. Across the street?

A. I didn't say across the street.

(Testimony of Laura Herrington.)

Q. That is what I am trying to get at.

A. I am telling you it is on this side (indicating).

Q. This is the house? A. Yes.

Q. Which side of the street is Wooldridge's house on, on the right or left-hand side of the street, going out away from town? You know which your right hand is. A. I can't explain to you.

Q. You know which your right hand is, and which your left hand is.

A. I guess—of course I know that.

Q. Why, certainly. Was it on the right-hand side of the street or the left-hand side of the street, going out where this house of Wooldridge was?

A. On the right hand. His house is on the right-hand side.

Q. Going away from town?

A. I don't know. I didn't notice these things.

Q. You know where it is? [119]

A. I know where the house is.

Q. And it is still standing in the same place where it used to stand?

A. I guess it is. I don't know. I didn't stop to look.

Q. Let me ask you this question: If you were down town and were going out to Wooldridge's house, out this street that his house is on, when you get out to where the house was, would it be on the right-hand side of the street going out there or on the left-hand side of the street going out?

A. I told you I couldn't explain that.

Q. You said it was on the right-hand side of the

(Testimony of Laura Herrington.)

street, but I wanted to be sure you understood. I was directing your attention to the right-hand side going out. You cannot explain it any clearer than that. A. No. I can't.

Q. Was this cabin that you have talked about on the same block as his house? A. Yes.

Q. Are there any houses between it? A. No.

Q. No houses between it; and how close to his house was this cabin?

A. I told you I couldn't say.

Q. Give the jury some idea. A. I don't know.

Q. Do you know how far one hundred feet is?

A. No.

Q. Do you know about how far it is?

A. I said I didn't know.

Q. Well, is it as far from his cabin as the corner of the [120] First National Bank here down to the corner of that block?

A. It might be. I didn't notice.

Q. As a matter of fact, is it a greater or less distance from his house?

A. I didn't notice, so I can't tell you.

Q. You have no idea? A. No.

Q. Describe to the jury what kind of a cabin it was. A. It was a log cabin.

Q. Had you ever been in there before? A. No.

Q. Have you ever been in there since? A. No.

Q. Were there any street lights there so that you could see? A. No.

Q. Could you see? A. Yes. I could see.

Q. Moonlight, was it? A. I didn't notice.

(Testimony of Laura Herrington.)

Q. See pretty well? A. Yes.

Q. Could you see when you got inside the cabin?

A. No.

Q. Perfectly dark? A. Yes.

Q. Was it cold? A. Yes.

Q. How cold was it? A. I don't know.

Q. Well, about how cold? [121]

A. I don't know.

Q. Do you know how cold it was upon the 22d and 23d days of December, 1913?

A. No. It was cold enough.

Q. Were you cold? A. No.

Q. Did you feel cold? A. No.

Q. Was there any door in the cabin? A. No.

Q. He opened the door, did he?

A. I think the door was part ways open.

Q. Any windows in the cabin? A. No.

Q. No windows in the cabin? A. No.

Q. Any place for windows? A. Yes.

Q. Any stove in there?

A. I couldn't see. It was dark.

Q. Any furniture in there? A. I couldn't say.

Q. Could you see anything inside of the cabin?

A. No.

Q. Did you and he carry on any conversation while you were going from the Glass Block or near the Glass Block to this cabin?

A. We might have. I don't remember.

Q. Was there anything said about the purpose for which you were going?

A. No. Not that I remember of.

(Testimony of Laura Herrington.)

Q. Not a word. Just walked along.

A. We might have talked, but not on that.

Q. Not on that? A. No. [122]

Q. Now, in going to this cabin, did you go by his house, or was the cabin—did you reach the cabin before you got to his house?

A. I think we took another road.

Q. Just which way did you go, Laura?

A. I think we took in where the wireless is, took that road.

Q. How did you get on that road? A. Walked.

Q. I understand. But which way did you go? Which street did you take to get on the road leading to the wireless?

A. We went by the Eagle Hall, and then I have forgot which *was* we took.

Q. Did you know when you started to walk with him where you were going?

A. No. I had no idea where he was going to take me.

Q. Did you ask him where you were going?

A. Yes. He said he knew a little cabin by his house.

Q. Then did you go, after you got up and turned the corner near the Eagle Hall, did you keep on going in a straight line, or did you turn around some corner and change streets, before you got there?

A. We surely must have turned a corner if we went on that road.

Q. Where did you go?

A. I said I didn't remember.

(Testimony of Laura Herrington.)

Q. You don't remember. Were there any lights in his house at that time?

A. Yes. I saw a light there.

Q. After you came away from the cabin, which way did you go? Which road did you take? [123]

A. I don't remember.

Q. Do you remember anything about it?

A. We might have come the same way, but I don't remember.

Q. How long were you in the cabin?

A. I don't know.

Q. Did you get cold while you were there?

A. I don't remember.

Q. And he gave you two dollars and a half, you say.

A. Yes. That is what I said.

Q. And you told him that was not enough.

A. Yes.

Q. Did you count it? A. Yes. I counted it.

Q. How did you count it?

A. The same as you count your money.

Q. Just tell me how that would be.

A. I don't see why you shouldn't know.

Q. You just tell me anyway whether you could see it or not.

A. I can't tell you.

Q. You don't know how you counted it.

A. Well, I counted it.

Q. Just tell me how you counted it, can't you?

A. I said I can't tell you, and I am not.

Q. You can't tell me and you are not going to tell me.

A. Yes. I had to look at it.

Q. I thought it was dark in the cabin?

(Testimony of Laura Herrington.)

A. I can get out of the cabin, can't I?

Q. I don't know whether you could or not. I understood you to [124] say that right then and there when he gave you the two dollars and a half you said it was not enough. So you must have known how much it was. Now, what are the facts in regard to that, Laura? What are the facts? Do you know how you came to determine that you had gotten two dollars and a half? A. He gave me it.

Q. How did you determine that?

A. What do you mean?

Q. Did you get outside of the cabin?

A. Of course.

Q. How far outside of the cabin did you get before you counted it? A. Oh, on to the road.

Q. How is that? A. I went on to the road.

Q. Which road? The wireless?

A. The house wasn't by the wireless.

Q. I mean the road or street leading to the wireless. That is known as a road, the rest of them are known as streets. Now what do you mean you were on a road?

A. The road was by his house, wasn't it?

Q. That is what I have been trying to find out from you. The minute you got out on to the road, it was light enough to see, wasn't it?

A. It was light enough.

Q. It was light enough so that you could see, without determining it in any other way, that you had two dollars and a half, and you told him it was not enough. A. Yes.

(Testimony of Laura Herrington.)

Q. Why did you tell him that? [125]

A. I wanted more, I guess.

Q. Did you think you were entitled to more?

A. I don't know.

Q. I want to find out from you why you made that remark to him. What is that?

A. I didn't say anything.

Q. Tell us why you didn't think it was enough.

A. I don't know.

Q. You don't know? A. No.

Q. Did you have any idea how much you ought to get according to your idea? A. Three and a half.

Q. Where did you get that idea?

A. I don't know.

Q. Who told you about what you ought to get?

A. I don't see why you should know that.

Q. Did somebody tell you that? A. Yes.

Q. Had you ever got that amount before?

(Plaintiff objects as irrelevant, incompetent and immaterial. Sustained. Defendant excepts and is allowed an exception.)

Q. But you did know, or at least you felt very strongly that you had not got enough, and you told him so. Is that right? A. Yes.

Q. Did you ask him before you went into the cabin what he was going to give you? A. No.

Q. After you came out you found out what he gave you, and then said it was not enough. Is that it?

A. I guess that is it. [126]

Q. I don't want you to guess, but I want you to tell what the facts are exactly. And you claim that you

(Testimony of Laura Herrington.)

never got that dollar that you were entitled to get.

A. I told him he needn't give it to me.

Q. Until right here lately. Is that what you want the jury to understand? A. Yes.

Q. Right here lately? A. Yes.

Q. When was that, about?

A. That was the morning he came to the house.

Q. Did you ever ask him for it in the meantime?

A. I didn't see him to ask him.

Q. You never saw him to ask him. A. No.

Q. From the time that you were up at the cabin, either the 22d or 23d day of December, 1913, up until say within the last month, you never saw him to ask him for this dollar. Is that right?

A. Well, I might have seen him on the street, but I never spoke to him.

Q. You have never spoken to him since?

A. No.

Q. Never had an opportunity, Laura, to ask him for this dollar until just recently. That is true, is it? A. Well, what do you mean?

Q. I mean—I am trying to find out why you didn't collect this dollar before. Was it because you had no opportunity to do so?

A. Well, I told you I told him it would be all right. [127]

Q. But did you ever ask him for it again before you asked him for it up in this house within the last month? A. No.

Q. What I am getting at: Did you even have an opportunity to ask him?

(Testimony of Laura Herrington.)

A. If I did, I didn't ask him.

Q. You never asked him. But you don't remember of any opportunity you had of asking him?

A. No.

Q. So, you went right directly from there to Morency's house, did you?

A. Yes. He walked a ways with me.

Q. How far did he walk with you?

A. I don't know.

Q. Well, about how far?

A. It wasn't very far from aunty's place.

Q. He walked pretty near to aunty's place with you. Is that true? A. Yes.

Q. This is how far? A. I don't know.

Q. What did he walk with you for down there? Do you know? Did he say?

A. I believe I asked him to. I am not sure.

Q. Did he walk pretty near down to aunty's place, and then he left you and you left him? A. Yes.

Q. Did you meet any people on the street, see any people?

A. We saw a man coming from afar, and he told me to hurry because he knew him. [128]

Q. Who told you to hurry because *you* (probably means *he*) knew him? A. Wooldridge.

Q. And you hurried? A. Yes.

Q. You didn't say anything to this man about it.

A. He was not near enough to talk to.

Q. How close was he? A. I said he was far.

Q. You could see him. You could have halloed to him?

(Testimony of Laura Herrington.)

A. I might have halloed. But I didn't do that.

Q. You didn't want to do that. A. No.

Q. Did you see anybody else along the street on your way down to your aunty's place, even at a distance? A. No.

Q. Just this one man.

A. Just this one man. Yes.

Q. Who did you first see when you went into your aunty's place? A. The children and my mother.

Q. Your mother was there. A. Yes.

Q. Did you say anything to your mother about it? A. No.

Q. You didn't say anything to any of the children about it? A. No.

Q. You didn't say anything. A. No.

Q. Did you talk to Ed Hall? [129]

A. Yes. I did.

Q. How long after you went into the house did you talk with him? A. I don't know.

Q. About how long? A. I couldn't tell you.

Q. Well, give us some idea. A. I don't know.

Q. Half an hour?

A. It might have been. I don't know.

Q. It might have been longer than half an hour.

A. I don't think so.

Q. About a half an hour.

A. I couldn't say that.

Q. About how long? A. I said I didn't know.

Q. Give us some idea?

A. I have got no idea to give you.

Q. Not a bit in the world. A. No.

(Testimony of Laura Herrington.)

Q. It might have been more than a half an hour.

A. I know it was not more than half an hour.

Q. That is the limit, is it, that you want to place on it, from the time you went into the cabin, before you said anything to Ed Hall? Was he in the room with the rest of the people?

A. He came there after I came.

Q. You had an opportunity of talking with your mother and with the children and anybody else that was in the house, before Ed Hall came?

A. Yes. [130]

Q. And you didn't do it. A. No.

Q. Where did you tell him, or talk to him? In the house? A. Yes.

Q. Were the rest of them present. A. No.

Q. Were they in the room when you told him?

A. No.

Q. Where were you? A. In the bedroom.

Q. What was Ed doing in the bedroom?

A. I called him in there.

Q. You called him in there. A. Yes.

Q. Did you motion to him or call him in?

A. I called him.

Q. Didn't you, when you got inside, motion with your finger?

A. I didn't have to look at him when I called him.

Q. He will come without your looking at him, will he? What do you mean by that?

A. I said I called him.

Q. Now, the next person that you talked to about this was your sister Catherine, I understood you to

(Testimony of Laura Herrington.)

say. A. I showed her the two and a half.

Q. That is the same two and a half. A. Yes.

Q. That you had gotten before Christmas.

A. That Mr. Wooldridge gave me.

Q. On the 23d day of December. [131]

A. That is the money Mr. Wooldridge gave me.

Q. That is the same two and a half, is it?

A. Yes.

Q. How long after you got it from Wooldridge was it that you showed it to Catherine?

A. Two or three days.

Q. Did you keep two dollars and a half two or three days without spending any of it?

A. I could keep it.

Q. You did keep it? A. Yes.

Q. Well, then, it must have been after Christmas that you showed this to Catherine, wasn't it?

A. I don't know. It was not after Christmas. I don't know.

Q. It was after Christmas Day, was it?

A. I don't know. I didn't stop to think.

Q. You never stopped to think, you say. Is that what you said? A. Yes, that is what I said.

Q. You said it was two or three days, and it was either the 22d or 23d that you got the money. So it would be, according to that, if you are correct in that estimate, it would be the 24th or 25th of December that you saw Catherine, wouldn't it?

A. I guess so.

Q. Did you have any other money with you, or have any money at all, before you met Wooldridge?

(Testimony of Laura Herrington.)

A. I only had the two and a half.

Q. You didn't have any money when you saw Wooldridge. A. No.

Q. And this two and a half you kept without spending a cent of [132] it for probably two days.

A. That is what I said.

Q. And had the same identical two and a half, the same pieces of money, were they? A. Yes.

Q. And you showed them to Catherine. A. Yes.

Q. And as near as you can tell us about the facts of it, it was on the 22d, it would be the 23d—it would be the 24th or 25th of December.

A. I don't know. It was two or three days after.

Q. Two or three days after you were up at the cabin with Wooldridge. A. Yes.

Q. Whereabouts were you when you showed this two and a half to her?

A. She was going up to Running's house.

Q. Working there, was she? A. Yes.

Q. Did you go up there with her?

A. No. I was walking that way.

Q. How did you happen to show Catherine this money? A. I don't remember how it came about.

Q. You don't remember. Did you tell her where you got it?

A. Yes. I told her I got it from Mr. Wooldridge.

Q. Did you tell her, or did she ask you, how you came to get that from Mr. Wooldridge?

A. I told her Mr. Wooldridge gave it to me.

Q. What I mean is: Did you explain to her—ex-

(Testimony of Laura Herrington.)

plain to her how it came that he gave you this two and a half? [133]

A. No. I didn't explain it.

Q. Did she ask you? A. No.

Q. She said nothing to you in the way of an inquiry. A. Not that I remember.

Q. She didn't ask you why Wooldridge was giving you this two and a half.

A. She might have, but I don't remember.

Q. You don't remember. A. No.

Q. Did you have mittens on when you were up there at the cabin? A. No.

Q. Bare hands? A. Yes.

Q. You didn't wear any mittens. A. No.

Q. Did you have a moon? A. No.

Q. You don't know how cold it was.

A. I told you before I didn't.

Q. That might have been 1914, might it not?

A. No. I said 1913.

Q. You are quite sure it was 1913.

A. I am not sure.

Q. If you are not sure then, it might have been 1914, so far as you know, might it not? A. No.

Q. What? You say—(interrupted).

A. That is what I said.

Q. It couldn't possibly have been 1914. Is that what you want [134] us to understand?

A. I don't know.

Q. You don't know. Who else did you tell about it besides—or say anything, mention the matter at all, besides Ed Hall, and then show this two and a

(Testimony of Laura Herrington.)

half to your sister Catherine?

A. I think I told Grace Carey.

Q. And who else?

A. No one else that I remember of.

Q. Did you tell any of your folks?

A. No. I would be ashamed to tell them anything like this.

Q. Weren't you ashamed to tell your sister?

A. No. I am not ashamed to tell her this.

Q. Not ashamed to tell Grace Carey this.

A. No. She is the same kind of a girl as I am, so I don't see why I should be ashamed.

Q. She is the same kind of a girl that you are.

A. Yes.

Q. When did you tell your mother with reference to it, Laura?

A. I didn't tell my mother about this.

Q. You never did?

A. Well, I told her afterwards, after Mr. Wooldridge made the arrangement with me.

Q. You told her then. A. Yes.

Q. How did you happen to tell her after that time?

A. I told her about the arrangement.

Q. What arrangement do you refer to?

A. The arrangement we made to meet.

Q. Who got you to make those arrangements.

A. Mr. Wooldridge did. [135]

Q. Who? A. Mr. Wooldridge.

Q. Mr. Wooldridge did?

A. He made the arrangement himself.

(Testimony of Laura Herrington.)

Q. Who got you to make those arrangements, if anybody?

A. Marshal Miller told me if Mr. Wooldridge wanted to make any arrangements, to make them, and for me to tell my daddy.

Q. That is George Herrington. A. Yes.

Q. What did he tell you that he wanted you to do that for?

A. Wanted to see if I was telling the truth about Mr. Wooldridge.

Q. Where was Miller when he told you that?

A. I was up to Mr. Roth's office.

Q. Mr. Roth didn't say anything to you about it.

A. No. He has got nothing to do about those arrangements.

Q. Who had nothing to do about those.

A. Mr. Roth?

Q. You mean with you directly.

A. Yes, with me.

Q. But Mr. Miller was up to Mr. Roth's office when he first spoke to you about making these arrangements. A. Yes. He was up there in the office.

Q. When was that?

A. I think it was the first night when I went up there.

Q. When was that with reference to the night you say Wooldridge actually came to your place, how long before or after?

A. It might have been on the 10th.

Q. What date was it, Laura, that Wooldridge first came to your house?

(Testimony of Laura Herrington.)

A. I don't know. I didn't keep track of it. [136]

Q. What was it that might have been on the 10th?
What was it that you meant happened on the 10th?

A. I was up to Mr. Roth's office on that date.

Q. The 10th of what, of February? A. Yes.

Q. Now, how long was that before Wooldridge came to your house? A. How long before?

Q. Yes.

A. I think when we talked about it up there, it was the next day.

Q. Talked about it where?

A. At Mr. Roth's office.

Q. What was the next day?

A. It would have been the 11th.

Q. When you were in Roth's office it was on the 11th, you say? A. No. It was on the 10th.

Q. It was on the 10th that you talked first with Mr. Miller in Roth's office? A. Yes.

Q. Then what was it that happened on the 11th?

A. Mr. Wooldridge came down to the house on the 11th.

Q. What did he do when he came down there on the 11th then? A. Oh, about the potatoes.

Q. Is that it? A. Yes.

Q. That is the first time he had been there that you had seen him, was it? A. Yes.

Q. When had you last seen Wooldridge before he came down to the house there about these potatoes, Laura, to talk with him?

A. The last time I saw him. [137]

Q. Before he went there about these potatoes, how

(Testimony of Laura Herrington.)

long before that had you seen him last?

A. I didn't see him before that.

Q. You didn't see him before that. A. No.

Q. You hadn't seen him for how long; a year?

A. He came out on Ester once.

Q. I mean in town. How long was it from the time on Ester that he was out there, several months?

A. I don't know.

Q. Was it during the summer time?

A. That I saw him—(interrupted).

Q. Yes. You have been in from Ester how long now? A. I have been in here—(interrupted).

Q. About.

A. I don't know. I can't keep dates.

Q. About how long? About a year?

A. I don't know.

Q. You have kept some dates, haven't you?

A. I don't know.

Q. Well, give us some idea of how long you have been in town since you left Ester Creek. Has it been about a year or more than a year?

A. Just about a year.

Q. And it was during the time you were out at Ester—it would be more than a year ago that you last saw Mr. Wooldridge, before you saw him at the house about these potatoes. Is that true?

A. I didn't listen to your question. [138]

Q. I will ask you again. From the time that you saw him at the house, the first time prior to that time, it would have been a year that you had seen Mr. Wooldridge. Isn't that true, Laura? Can you

(Testimony of Laura Herrington.)

recollect? Tell the jury about how long it had been.
I don't care accurately. A. I don't know.

Q. Would you say it had been about a year?

A. I said I didn't know.

Q. Would it be six months, Laura. Can't you give us an idea? A. I refuse to answer that.

Q. Why? A. Just because I refuse.

Q. Why do you refuse? Isn't it a proper question, don't you consider?

(Plaintiff objects on the ground that she has answered that she didn't know. Objection sustained. Defendant excepts. Exception allowed.)

Q. Well, then, let's get back to this time that you talked with Miller. I understood you, and I want to see if this is true and correct: As near as you could remember you were up to Roth's office on the 11th or on the 10th, and Miller was there. Is that true?

A. Yes.

Q. That was on the 10th of February. Then upon the 11th of February Wooldridge came to the house in some connection about some potatoes, asking about—something to do with—something about potatoes. Is that true? A. Yes.

Q. You are sure of that, are you? So that when Wooldridge first came there, on the 11th, you had already talked to Mr. Roth and Marshal Erwin—or Marshal Miller in Roth's office [139] about some dates you were going to have with Wooldridge. Is that true?

A. I told you once that Mr. Miller said if I could get—(cries).

(Testimony of Laura Herrington.)

Q. If you could what? If you could get Mr. Wooldridge to make a date with you, to do it. Is that what you said, Laura? Don't cry; just answer the question. Was that true?

A. I told you before.

Mr. ROTH.—Answer the question, Laura?

Mr. MARQUAM.—I understood you—I may have misunderstood you, but I understood you to say that they told you if you could make a date with Mr. Wooldridge to do it.

A. That is what Mr. Miller said.

Q. That is what Mr. Miller said to you? So, that was what you proceeded to do, was it? A. Yes.

Q. How did you go at it to do it?

A. I asked him about the dollar.

Q. Just tell this jury the first thing you said to Mr. Wooldridge when you saw him there, and just exactly how it came about. Did you think by asking him for the dollar, or for a dollar, however you expressed it, that you could get him to make a date with you?

A. Yes. Every time he sees me he tries to.

Q. Every time he sees you he tries to? Now, after making that statement, can you tell this jury how long it had been before this time that you had seen Wooldridge?

(Plaintiff objects as witness has heretofore stated that she couldn't fix any time at all.)

The COURT.—Q. Laura, do you remember when you had seen Mr. [140] Wooldridge the first time before you saw him down at the house? Do you re-

(Testimony of Laura Herrington.)

member how long ago it had been since you had seen him, a month ago?

A. Before he came down to the house?

Q. Yes. The first time before he came down to the house? I thought maybe you would understand it that way, or would you understand it if I said: The last time before he came down to the house; had you seen him a month before, or two months before, or had it been a long, long time?

A. It was a long, long time before I saw him.

Q. You don't remember now? A. No.

Q. You don't remember whether it was in the summer-time or in the winter-time?

A. This was winter when he came down this last time.

Q. But did you see him last summer?

A. Yes. He came out to Ester once.

Q. Was that last summer or a year ago?

A. When we were living on Ester.

Q. He came to Ester when you were living there?

A. Yes.

Mr. MARQUAM.—Q. Laura, do I understand that you hadn't seen him since you came in from Ester until this time to talk with him?

A. Yes, to talk with him.

Q. And you moved in from Ester—your folks moved in from Ester some time along in July, did they not? A. No. Not in July.

Q. Wasn't it some time last July? [141]

A. No. I don't think it was.

Q. When do you think it was?

(Testimony of Laura Herrington.)

A. It was in the fall, I think, somewhere along in August.

Q. This last fall, do you mean? You mean the last August, the August that has just passed, do you; not a year ago? Can you answer that?

A. No. I can't answer that.

Q. Who had talked to you before Mr. Miller had talked to you in the marshal's office?

A. I talked to Mr. Roth. Mr. Miller was present.

Q. You talked to Mr. Roth? A. Yes.

Q. Was that also upon the 10th? A. Yes.

Q. You talked with Mr. Roth first, and then afterwards with Mr. Miller.

A. They both talked to me.

Q. That was the first time they had ever talked to you? A. Yes.

Q. Had anybody else ever talked to you; had your father ever talked to you about this date that you were to make?

A. Well, I told daddy when I made the date with Mr. Wooldridge.

Q. Was that after you talked with Mr. Roth and Mr. Miller, or before? A. After.

Q. But the first talk that you had with anybody about making a date with Wooldridge was with Mr. Roth and Mr. Miller?

A. No. Mr. Roth had nothing to do with that.

Q. You had not talked with him about that at all. When this [142] conversation with you and Mr. Miller occurred, was Mr. Roth in the room?

A. Yes.

(Testimony of Laura Herrington.)

Q. He heard everything that was said?

A. Yes.

Q. And what time of day was that?

Q. This was night.

Q. The night of the 10th? A. Yes.

Q. What did Wooldridge have to say that you heard about any potatoes when he was down at the house? A. I was upstairs.

Q. Did you hear?

A. I heard him say something about potatoes and daddy, and that is all I heard.

Q. That was when?

A. When he came to the house.

Q. That was on the 11th?

A. It must have been.

Q. It was the next day, anyway, after you had talked with Mr. Miller, was it?

A. No. He came before that.

Q. Oh, he did? Before what? (Discussion between Mr. Marquam and the Court as to what "before what" and "before that" relates.)

Q. What did you mean by that, Laura? What were you trying to tell me when you said you saw him "before that"? A. I don't know myself.

Q. You don't know yourself? Was your mother home at that time that you were upstairs? [143]

A. I told you before, she was.

Q. You told Mr. Roth that? A. You heard it.

Q. All right. A. You were sitting there.

Mr. ROTH.—Just answer the questions, Laura.

Mr. MARQUAM.—Q. She was downstairs and

(Testimony of Laura Herrington.)

you were upstairs, and you heard some talk, did you, between Mr. Wooldridge and your mother?

A. Yes.

Q. What was that talk?

A. I told you I just heard a few things.

Q. What were they?

A. About potatoes and daddy.

Q. You didn't come downstairs then?

A. I did come downstairs.

Q. You did come downstairs? A. Yes. I did.

Q. Then, after you came downstairs did you hear any conversation between your mother and Wooldridge? A. Then my mother went upstairs.

Q. Now, when Wooldridge first came into the house, give this jury a correct statement of everything that you heard Wooldridge say to your mother, or your mother say to Wooldridge.

A. When mamma went upstairs then I talked to him.

Q. Before she went upstairs what was said between them?

A. He said I was growing, and I don't remember what he said to mamma. I didn't pay any attention.

[144]

Q. You heard what was said, but you don't remember it? A. No. I don't.

Q. But you heard it? You were in a position so you could hear it? A. Of course I was.

Q. What purpose had you in coming down at that particular time? A. I came down to see him.

Q. In order to make this date with him that Mr.

(Testimony of Laura Herrington.)

Miller had asked you to make? A. Yes.

Q. And you say you succeeded in making this date? A. Yes.

Q. You were the first one that suggested it?

A. I don't remember.

Q. Naturally, if you had that in mind and it was your object in accomplishing it, you were the first one that spoke about it.

A. I asked him about the dollar, and he said: "We didn't have a good piece the last time," and then he said, "We could have another one," and I said, "Yes."

Q. So, he was very susceptible to your suggestion that you meet again, was he?

The COURT.—Q. Do you understand what he means by "susceptible"?

Mr. MARQUAM.—Q. You were perfectly willing and anxious, in order to carry out this agreement with Miller, to make a date with him? A. Yes.

Q. So, what did you tell him?

A. I said I would.

Q. You said you would, not intending to, did you?

A. No, I didn't intend to. [145]

Q. You were just encouraging him to get him to come to your house there, or some place else, so that Miller would catch him?

A. He was more anxious than I was.

Q. Well, possibly. But you were making that date and making that arrangement for the purpose of catching him, were not you?

A. He set the trap himself for himself.

(Testimony of Laura Herrington.)

Q. What trap?

A. It seems like it was a trap. I guess you could see that. You know very well.

Q. So, you were playing part of that trap game yourself? A. Well?

Q. Where did you get that word "trap"? Who told you anything about a trap, Laura?

A. I said it myself.

Q. Did anybody connected with this case, Mr. Miller or the district attorney use that word in describing what they wanted done?

A. No, sir. They didn't.

Q. That is just out of your own mind?

A. Yes. It is.

Q. So you say he made the trap himself, instead of you and the marshal?

A. He was perfectly willing.

Q. I am not asking you about him being perfectly willing. You are trying to tell now that Wooldridge was laying the trap himself?

A. Yes. Miller said that if he wanted to make a date with me, for me to make it.

Q. Asked you to do it [146]

A. Well, I guess that must be.

Q. So, in response to Mr. Miller's request you proceeded to suggest the matter to him about making a date with him? Is that the idea? Is that true? That in order to do that, the way it occurred to you, the best way to do was to ask him for that dollar? Is that right? A. Yes.

Q. So, he was to meet you when?

(Testimony of Laura Herrington.)

A. At seven-thirty at my house.

Q. Did you know that he was coming down to the house there on a potato deal with your father?

A. No, sir. I did not.

Q. You never heard a word about that? A. No.

Q. Your father didn't tell you that Wooldridge had spoken to him on the street about some potatoes, and he would be down to the house?

A. He might have told my mother.

Q. He didn't tell you? A. No.

Q. Did you tell Miller or Roth that Wooldridge was expected down to your house there to sell some potatoes or bring some potatoes down?

A. I told them afterwards.

Q. You didn't tell them before?

A. No. How could I know before?

Q. You might have done it?

A. I don't see how I could have known before?

Q. Didn't your mother say something about it, or your father? [147]

A. My father talked to my mother.

Q. He knew about it? Don't you know, Laura, that your father and your mother knew and had discussed the probability of Wooldridge coming down there about these potatoes that he was going to let them have? A. I don't know nothing of the kind.

Q. You never heard anything about it?

A. No.

Q. Who did you first—did George Herrington, your father, before the time that you—that Wooldridge came down to your house and you asked him

(Testimony of Laura Herrington.)

for the dollar, had he said anything about this trap that was to be laid by you? A. No.

Q. He had not said a word? A. No.

Q. The first person that ever mentioned it was Miller, was it? A. He didn't mention "trap."

Q. All right. If you don't want to use that word. Did your father say anything about making a date with Wooldridge?

A. He told me if I could make a date to make it, which I did.

Q. Your father told you that? A. Yes.

Q. Did he tell you that before Miller told you that, or after? A. I guess he told it afterwards.

Q. And it was along the same lines that Miller had talked to you, was it; about the same request that your father made that Miller had made to you?

A. Yes.

Q. So, at that particular time did you succeed in making a date with Wooldridge? [148]

A. I made the date with him when he came down to the house.

Q. How is that?

A. I made the date with him when he came down to the house.

Q. You made the date to come down to the house right then?

A. When he came down to the house I made the date.

Q. While your mother was upstairs? A. Yes.

Q. Didn't she go upstairs for the purpose of be-

(Testimony of Laura Herrington.)

ing absent, so you would have clear sailing with him there? A. Yes.

Q. You knew what she was going upstairs for?

A. Yes.

Q. You had talked that over before? A. Yes.

Q. And you had suggested to her, or she had told you, that she would get out of the way so you could fix up this proposition, did she?

A. She went upstairs. That is all I know.

Q. With an understanding with you, did she not? You understood what she was going upstairs for?

A. We never knew Wooldridge was going to come. Mamma was surprised when he came to the door.

Q. Answer my question. After he did get there, your mother went upstairs through an understanding with you, and you knew what she was getting out of the way for?

A. I knew what she was getting out of the way for.

Q. And she knew why she was going upstairs?

A. Yes. She knew it.

Q. Who did you tell, after you claim to have made this arrangement? [149]

A. I told my—(interrupted).

Q. (Continuing.) With Wooldridge? Who did you tell about it first? A. My daddy.

Q. Was your daddy upstairs too?

A. When he came home that night.

Q. What did you tell him, Laura?

A. I told him about the arrangement I made with Wooldridge.

(Testimony of Laura Herrington.)

Q. What did he say?

A. I suppose he told Miller.

Q. I don't want any suppositions. Just what did he say to you? A. I don't remember.

Q. Did he say that was fine, or that was all right, we will get him? A. He laughed.

Q. He laughed about it?

A. Yes. He laughed, I suppose.

Q. That was fine; that was a joke with him?

A. I don't know.

Q. He laughed, anyway. What else did he do or say? What else did he do at that time, or say?

A. I told you I don't remember.

Q. You don't remember. Was there anybody else there when you told him? A. No, sir.

Q. Did he say what you should do then?

A. No. He said he would tell.

Q. He said he would tell who?

A. Miller. [150]

Q. And did he leave you to go down and tell Miller about it? A. No. He didn't.

Q. When did he leave?

A. He went the next morning, I guess.

Q. Do you know? A. I know he told me.

Q. What time in the evening was it that you told your father, when he laughed about it?

A. I don't know. I didn't look to see.

Q. Well, about what time? Was it about supper time? A. Yes. It was,

Q. Was it very late, or immediately or shortly after supper? A. Daddy always gets home late.

(Testimony of Laura Herrington.)

Q. You mean when he gets home to stay for the night? A. Yes, sir.

Q. Was it on one of these occasions? Was this the time he went home for the night, or was he home for supper? A. He came home for the night.

Q. And he stayed; he didn't go down town that night again after you told him? A. No.

Q. Isn't it a fact that you told him earlier in the evening, and he left then, and then came back later and then stayed for the night? A. No.

Q. You are sure of that? A. I am sure of that.

Mr. ROTH.—We object, as counsel is talking about one happening and the witness is talking about another. They are at cross purposes. [151]

Mr. MARQUAM.—It may be.

Q. You told your father about this?

A. I said I did.

Q. What time was it that you told him with reference to the time that you had talked to Wooldridge?

A. I didn't listen to that question.

Q. You know when you talked with Wooldridge and made this date with him? A. Yes. I do.

Q. What time of day was that?

A. That was in the morning.

Q. All right. Now, the same evening, you told your father about it, I understood you to say.

A. Yes.

Q. Didn't he come home for lunch at noon?

A. He comes home sometimes at noon.

Q. On this particular date do you remember whether he came home for lunch?

(Testimony of Laura Herrington.)

A. I don't remember whether he did or not.

Q. Did he come home for supper?

A. Not that I remember of. Sometimes he stays away all day.

Q. I mean on this particular occasion?

A. I said I don't remember.

Q. At any rate, you didn't see him to talk to him, and didn't talk with him about this until late that same night. Is that true? A. Yes.

Q. That is what I understood you to say before. And then he said he would tell Miller about it. Is that true? A. Yes. [152]

Q. All right. You say that you know that he did tell Miller. How do you know that?

A. Well, he said he was going to tell Miller.

Q. Do you believe everything that your father has told you along that line?

The COURT.—You need not answer that question.

(Defendant excepts and is allowed an exception.)

Mr. MARQUAM.—Q. Is that the only reason you have for suspecting or knowing that George Herrington, your father, told Miller, because he said he was going to? A. Yes.

Q. Now, who came to the house there to make arrangements for this trap—I am going to use that term because you used it. You understand what I mean? Who came there to make the detail arrangement for that?

A. Marshal Miller and Marshal Berg.

Q. When did they come?

(Testimony of Laura Herrington.)

A. It was before half-past seven.

Q. What date; the next day?

A. It was when I made arrangements to meet him. I believe we met that same night.

Q. The same night as what?

A. As he was supposed to come to the house.

Q. That was the same night, was it, that you first—that he first came there to you to talk to you, or at least came there to talk about potatoes? Is that true, Laura? Let me put it in another way and see if we can get this straightened out. Take a certain date, a certain morning about 10 [153] o'clock. I understood you to say on your direct examination he came there, and then is the time you talked with him and made this appointment with him.

A. Made the appointment with him. Yes.

Q. Did you make that appointment for that same night or the next night? A. For the same night.

Q. Then, isn't it true that you must have told your father about it before late that night, if you were to have that appointment that night and these arrangements were to be made? After realizing that, don't you think, as a matter of fact, that you must have told your father during some time that he was home for lunch or in the evening at supper time, or some time during the day, about this appointment? Do you see what I am asking you about?

A. Yes. I see.

Q. What is the fact? Is that true, that sometime shortly after you had made this date, that you told your father? Isn't that true? What do you think

(Testimony of Laura Herrington.)

about that? What is your recollection now? It must have been, mustn't it, that you talked with him sometime—(interrupted).

A. I remember of telling daddy that night.

Q. Late that night?

A. It was that night that I told him.

Q. Then, the date that you had must have been the next night, wasn't it, because you told him before this date was due, didn't you? What about that? You didn't tell him after the date was passed. That is true, isn't it? A. No.

Q. Certainly, you told him. The first time you would see him, [154] after making this date, you would tell him about it, wouldn't you? A. Yes.

Q. Don't you think that happened probably sometime during that day? A. I don't remember.

Q. But you are quite sure that the date was for the same night that you saw Wooldridge first in the morning. You are sure about that, are you?

A. I am not so sure.

Q. Well, then, what I want to get at, if I can from you, whether it was that you had made the date for that same night or the next night?

A. It was for the same night, I think.

Q. We will take that as settled then. So that evening at the time you were to meet Wooldridge, who was the first person that came there?

A. The first person that came there?

Q. Outside of your own family.

A. There was Marshal Berg and Marshal Miller.

Q. And that was about what time?

(Testimony of Laura Herrington.)

A. It was before half-past seven.

Q. Before half-past seven. What did they do? What did they come there for? Did they ask you about this? A. Daddy told them, I guess.

Q. What? A. Daddy told them.

Q. He told them. A. Yes, probably.

Q. Then what did they say to you when they came there? [155]

A. They would wait until Mr. Wooldridge came.

Q. I didn't catch that.

A. They were going to wait until Mr. Wooldridge came.

Q. That they would? A. Yes. They did.

Q. They waited until Wooldridge came, and where were they? A. Upstairs.

Q. How long did they stay upstairs?

A. They left the house at fifteen minutes after eight.

Q. At fifteen minutes after eight they left the house—Miller and Berg, you say.

A. Yes, and two others with them.

Q. How long after they left did they come back again?

A. They came there first and they fixed something up on the wall.

Q. Fixed something up on the wall.

A. Yes. I don't know what you call it. Then they went away again, and he told me that marshal—(interrupted).

Q. Before you get going too fast, I want to know what this thing they fixed up on the wall was.

(Testimony of Laura Herrington.)

A. I said I didn't know.

Q. What did it look like? A. I don't know.

Q. You know what it looked like.

A. Something you put to your ear. I know that.

Q. What did they say that was for?

A. They didn't tell me what it was for.

Q. Just tell us, Laura. You saw it. You were there at the time.

A. Yes. I was there at the time. [156]

Q. Tell us what it looked like and describe it?

A. I didn't notice. I just saw them put a bell up in the roof; then they took that thing down and put this inside of the bell.

Q. What do you mean by a bell, a paper bell?

A. Yes.

Q. That was hanging up on the roof?

A. Yes, and they put that up there.

Q. And they put this thing in the bell, and hung it up again, and what did they do?

A. The bell was always hanging there, so they only had to put this in the bell.

Q. What else did they do?

A. By this you could hear everything Wooldridge said.

Q. By this thing that they put in the bell. And where were they going to hear it?

A. They were upstairs.

Q. Did you see this thing that they put in the bell with your own eyes? A. Yes. I did.

Q. What did it look like and how large was it?

(Testimony of Laura Herrington.)

A. It was not very large.

Q. About how large? Show the jury.

A. I don't know.

Q. Show the jury what shape was it?

A. Round.

Q. How large around?

A. I don't know. [157]

Q. Give them some idea how big it was. Was it as big as the top of that pitcher? A. No.

Q. Was it as big around as that glass? You can see how large the top of that glass is. Was it that big? A. It might have been a little bigger.

Q. What color was it? A. Black.

Q. If it was as big around as that, how thick was it? A. I didn't take notice.

Q. Did you have it in your hand and look at it?

A. No.

Q. Did they show it to you? A. No.

Q. Did it have wires connected with it?

A. Yes. It had wires.

Q. Where did those wires go up?

A. I don't know. They had a box or something like that (indicating size).

Q. A big box. Where did they put that?

A. Upstairs.

Q. How was it they were going to use this? Did they explain to you? A. No.

Q. How do you know they could hear, then, through that anything that was said?

A. Daddy said they could.

(Testimony of Laura Herrington.)

Q. Your daddy was there when they were doing this? A. Yes. [158]

(The Court takes a recess until 8:00 P. M. this evening, and the jury, after being admonished, withdraw in charge of the bailiffs; and at 8:00 P. M. court reconvenes, and the defendant and his attorneys, and the district attorney, and the jury are present and trial resumed.)

LAURA HERRINGTON resumes her testimony on cross-examination.

(By Mr. MARQUAM.)

Q. Who was arranging that apparatus, Laura? Who was putting it up and fixing it?

A. Mr. Miller and Mr. Berg.

Q. What time of day or evening was that fixed up there and put up there?

A. It was before seven-thirty.

Q. Then, after they got it fixed up there, did they go upstairs and stay there?

A. No. They went away.

Q. And where did your father go? Did he go away too? A. I don't remember.

Q. He didn't stay there, did he?

A. I don't remember what time he went away, after they came in, or after these other men came in, or when Miller and Mr. Berg went away. I don't know.

Q. About that time he went away too? Did you say "Yes"? A. No. I didn't say anything.

Q. What do you say to that?

A. I said I didn't know.

(Testimony of Laura Herrington.)

Q. He went away within a few minutes, or within a short time after this apparatus was completed?

A. Yes, a short time after.

Q. Where was your mother?

A. She went away. [159]

Q. When did she go away?

A. When they were putting that thing up.

Q. Did anybody request her to go away?

A. Well, she said she couldn't stay there.

Q. She said she couldn't stay there. Who did she say that to? A. She told me that.

Q. Do you know whether anybody had requested her to go away? A. No.

Q. How many rooms have you in your house, Laura? A. Four.

Q. Four rooms, and this bell that you described to the jury was in the front room?

A. In the front room. Yes.

Q. And there is an upstairs where you can go up. What are upstairs, bedrooms?

A. Upstairs is a bedroom.

Q. What instructions did you get, if any, from the marshals as to what you were to do?

A. Talk loud.

Q. What did they tell you to say, or what did they tell you to talk about? A. This other time.

Q. Talk about this other time?

A. Yes, about when we met down in the cabin.

Q. Did you at any time talk about that?

A. Yes, when Wooldridge came up to the house.

Q. You were told to talk loud. You knew what

(Testimony of Laura Herrington.)

that was for, did you? A. Yes. [160]

Q. You knew that what you were to say would be heard, or supposed would be heard by somebody else, didn't you? A. Yes.

Q. And you knew that the purpose of it was to get some evidence against Mr. Wooldridge, didn't you? You understood that? A. I don't know.

Q. Didn't you know what the purpose of it was?

A. I know they were trying to find out whether I was telling the truth about Mr. Wooldridge.

Q. They didn't believe you. Is that the idea?

A. I don't know.

Q. Did they say they didn't believe you?

A. No. They didn't say that.

Q. They were trying to find out whether you were telling the truth about it.

A. Yes, sir.

Q. And they were going to find out through this machine? A. Yes.

Q. You said a while ago that Mr. Berg and some of the marshals were upstairs and were listening. What time did they go upstairs?

A. About seven-thirty.

Q. That was the time that you were to meet Wooldridge, was it? A. Yes.

Q. About seven-thirty. How long did they stay up there? A. I don't know.

Q. Quite a while? A. Yes.

Q. About how long?

A. I don't know. They left the house about fifteen minutes after eight. [161]

(Testimony of Laura Herrington.)

Q. They left the house about fifteen minutes after eight, and what did you do?

A. I stayed downstairs.

Q. Your mother was still away? A. Yes.

Q. And your father was still away? A. Yes.

Q. Well, what happened next there around the house? A. Waited for him.

Q. Waited for him. And how long did you wait?

A. Waited until eight-thirty.

Q. Anybody upstairs at that time?

A. Those men? No, not at eight-thirty.

Q. At eight-thirty they had gone? A. Yes.

Q. Mr. Berg and Mr. Miller?

A. No, Mr. Miller wasn't there.

Q. Just Mr. Berg, and who else?

A. Mr. Berg and Mr. Clark, and I don't know who the other fellow was.

Q. You don't know who the other fellow was?

A. No.

Q. Berg and Clark. What Clark is that?

A. That Clark over at the drugstore.

Q. Was he up there? A. Yes.

Q. Frank Clark over in the Red Cross Drugstore? A. Yes.

Q. What was he doing there?

A. I don't know. [162]

Q. How long was he there?

A. He stayed as long as the rest did, until fifteen minutes after eight.

Q. When did you first see him up there? When did he first come there?

(Testimony of Laura Herrington.)

A. When he first came to the house.

Q. I know, but at the time Mr. Berg came up there? A. The second time he came.

Q. And there was somebody else?

A. I don't know who the other one was.

Q. Did you see him?

A. No. I didn't get a good look at his face.

Q. You don't know who it was? A. No.

Q. Well, did they all go away together?

A. Yes.

Q. Not even one of them stayed up there?

A. Not after fifteen minutes after eight.

Q. Not after ten minutes after eight?

A. Fifteen minutes.

Q. Fifteen minutes after eight? Did anybody come back that evening and go upstairs again to this machine and listen through it? A. No, sir.

Q. Then after that, I understand you, some other marshals came up there?

A. That is when Mr. Wooldridge was sitting in there.

Q. Mr. Wooldridge came there at what time?

A. Eight-thirty.

Q. Knock on the door? [163] A. Yes.

Q. What did he say to you when you came to the door when he came there?

A. I asked him to come in.

Q. Didn't he ask you whether your father was there? A. Not that I remember of.

Q. Not that you remember of. Just be careful in your answers, and think, and see if he didn't ask

(Testimony of Laura Herrington.)

you whether your father was home, or was your father there, and that you told him he was upstairs.

A. No. I don't remember.

Q. You don't remember? You might have told him that?

A. Yes, I told him daddy was upstairs.

Q. Yes. I thought so. Was he upstairs?

A. No.

Q. What did you tell him that for?

A. I don't know.

Q. You don't know?

A. I was afraid of him, because I was alone.

Q. You were afraid of him?

A. Yes. I was alone.

Q. That was not the first time, according to your tell, that you were alone with Mr. Wooldridge?

A. I know that.

Q. You were afraid of him?

A. That is what I said.

Q. And you told him that your father was upstairs? A. Yes.

Q. You thought you would be safe with Mr. Wooldridge if you told [164] him that your father was upstairs? Is that the idea? A. Yes.

Q. What did you invite him in for, if you were afraid of him? A. I don't know.

Q. If you were afraid of a man and he would come and knock at the door, you wouldn't be apt to invite him in, would you? Why didn't you, instead of telling him your father was home, why didn't you say that he couldn't come in, and close the door?

(Testimony of Laura Herrington.)

Why didn't you do that, Laura?

A. I don't know.

Q. You don't know why you didn't? Well, after you invited him in, what did he say and what did you say? A. I told you I have forgotten.

Q. You have forgotten what he said? Didn't Mr. Wooldridge say to you after he went into the house that he wanted to see your father and he wished you would go upstairs and awaken him? You told him he was asleep, didn't you?

A. I told him daddy was upstairs.

Q. Didn't you tell him he was upstairs asleep, or lying down? A. I didn't say he was asleep.

Q. Didn't he say—ask you, after he had gone in, you played a record or two on the phonograph?

A. I played a record.

Q. You were entertaining him? A. No.

Q. Were you doing it for your own amusement?

A. I don't know.

Q. But you did play some record on the phonograph? A. Yes. I did. [165]

Q. After you had played about one record, and he had listened to it, didn't he tell you he wished you would go upstairs and tell your father that he was there to see him, wanted to see him?

A. No. He didn't.

Q. You are sure of that?

A. Of course I am sure of it.

Q. Why are you so sure about that particular thing, and you are not sure about other incidents happening about the same time?

(Testimony of Laura Herrington.)

A. I know he never asked it.

Q. And he thought all the time your father was upstairs?

A. He said he knew daddy was up town.

Q. He did? A. Yes.

Q. When did he tell you that?

A. When he was in there.

Q. He said that he knew your daddy was up town?

A. Yes.

Q. And he asked you then what you meant by telling him that your father was upstairs?

A. No.

Q. He didn't? Well, pretty soon some men came to the house and knocked at the door, when Mr. Wooldridge was there?

A. Marshal Berg and Marshal Miller came there.

Q. What did they do when they came there?

A. Asked for daddy.

Q. What did you tell them?

A. I told them to sit down. [166]

Q. Did they sit down? A. No.

Q. Did you tell—you knew who Mr. Miller was?

A. Yes. I knew who he was.

Q. And you knew who Mr. Berg was?

A. Yes. I knew.

Q. Did you tell them, when they came in, that you were afraid of Mr. Wooldridge?

A. No. I didn't.

Q. Why didn't you? A. I don't know.

Q. You were afraid of him? A. Yes.

Q. You didn't tell them anything about it?

(Testimony of Laura Herrington.)

A. No.

Q. You knew they would protect you, if you told them? A. Yes.

Q. And you didn't tell them anything about it?

A. No.

Q. The fact was, you were not afraid of Mr. Wooldridge? A. I was afraid of him.

Q. You told them to sit down, and what did they say? A. They went out.

Q. They went out right away? Did they come into the room?

A. Marshal Miller stood at the door.

Q. What did the other man do, Mr. Berg?

A. He stood behind Mr. Miller.

Q. Did they have their coat collars turned up?

A. I didn't notice. [167]

Q. Were they in a position so Mr. Wooldridge could see who they were?

A. I don't know. I didn't notice.

Q. You could see them plain enough to tell who they were? A. Yes.

Q. When you went to open the door, could you?

A. Yes.

Q. And where was Mr. Wooldridge? What was he doing?

A. He was sitting down in a rocking-chair.

Q. What part of the room was he with reference to the door that these men came and knocked at?

A. Sitting on this side (indicating).

Q. That is, to the right of the door as you enter the room? A. His back was to the door.

(Testimony of Laura Herrington.)

Q. How was he dressed? Did he have a fur coat on? A. Yes.

Q. Did he take his fur coat off when he came into the house? A. No.

Q. Did he have his hat in his hand?

A. I don't remember that.

Q. When he came in, when you invited him *him* and asked him to sit down, did you take his hat and lay it away, or did he hold it?

A. I don't remember that.

Q. He had his fur coat on? A. Yes.

Q. How long had he been in there from the time he came until these two men, Miller and Berg, came?

A. Not very long.

Q. About how long? [168] A. I don't know.

Q. What? A. I said; not very long.

Q. Well, what did Wooldridge do after these men left the door? A. I told him to get out.

Q. You told him to get out? A. Yes. I did.

Q. Did he go? A. Yes.

Q. What did you tell him to get out for?

A. I don't know.

Q. Give the jury some idea how many minutes he was there that time, if you can?

A. I said I didn't know.

Q. Did you know anything about him intending to bring some potatoes there to your place? Did you know anything about that; not necessarily from your own knowledge, but did you hear that?

A. I heard mamma and daddy talking about it.

Q. Just what did your mamma and daddy say

(Testimony of Laura Herrington.)

about it? What did they say, Laura; what did they say about potatoes? A. I don't know.

Q. Do you mean that you don't remember?

A. I don't remember.

Q. When did you hear them talking about it?

A. It might have been in the night or morning. I don't know.

Q. Just before this, or was it several days before?

A. I think it was that night. No, it couldn't have been.

Q. Before, wasn't it? [169]

A. It was before Mr. Wooldridge came that night.

Q. Was it after he had been there in the morning?

A. Yes. I think it was in the morning.

Q. After he had come to the house and inquired for George Herrington, and your mother said he would be there in the evening? Was it after that?

A. It might have been. I don't know.

Q. Might it not have been the day before that, the day before? A. No.

Q. You are sure of that. Give the jury some idea of what they said. A. I don't know.

Q. Were you present when they were talking?

A. No, not downstairs. I was upstairs.

Q. Were they talking downstairs? A. Yes.

Q. How is your house arranged and situated; so that a person upstairs can hear what is said downstairs? A. No. You can't hear very good.

Q. Well, you know they were discussing and talking about some potatoes? A. Yes.

Q. What was the situation there at your house

(Testimony of Laura Herrington.)

about your needing things to eat, potatoes and provisions?

(Plaintiff objects as irrelevant, incompetent and immaterial, except as to potatoes. Objection sustained. Defendant excepts. Exception allowed.)

Q. Well, you told Mr. Wooldridge to get out, and he got out? A. Yes.

Q. He came back a little while after that, didn't he? [170]

A. Yes. He said he followed those two men.

Q. How long after that did he come to the door again? A. Not very long.

Q. About how long? A. I don't know.

Q. What did he say to you when he came to the door and you opened it?

A. He told me he followed the men.

Q. Anything else?

A. He didn't know who they were.

Q. Didn't he ask you who they were?

A. I asked him who they were.

Q. Why did you ask him? You knew who they were, didn't you? A. Yes. Of course I did.

Q. What did you ask him for?

A. I don't know.

Q. How?

A. I wanted to see if he knew them.

Q. You told him they were a couple of men from the creeks, didn't you? A. No.

Q. What did you tell him?

A. I never told him that. He said he thought they were men from the creeks.

(Testimony of Laura Herrington.)

Q. Didn't you tell him they were a couple of men from the creeks?

A. I told him they might be, they might be some men from the creeks that owed daddy some money.

Q. And you knew who they were all the time?

A. Yes, I did. [171]

Q. And you were fooling him.

A. Yes, I was.

Q. You knew what you were there for, and knew you were supposed to be fooling him, so you were carrying out your instructions, were you?

A. Yes.

Q. Well, now was it at that particular time that he came to the door, or when he was there and you asked him to get out, that you told him he could bring the potatoes at any time?

A. I don't remember asking him that question.

Q. Not ask him, but say to him.

A. I don't remember of saying that.

Q. When you told him when he came there, as you say, about half-past eight, that your father was upstairs, what did he say right then?

A. He said he knew daddy wasn't upstairs.

Q. Did he ask you why you were saying that?

A. No.

Q. Did you tell him? A. No.

Q. Did you then, after he said he knew he was not upstairs—did you say that he was?

A. I never said anything.

Q. What was it you said this morning or this afternoon when Mr. Roth was questioning you, about

(Testimony of Laura Herrington.)

getting a dollar? What was it you said about that; that you got it from your mother, or from him, or who gave that dollar to you?

A. Mr. Wooldridge brought the dollar and gave it to my mother for me. [172]

Q. What did your mother say to you when she gave you that dollar?

A. She said: "Mr. Wooldridge told me to give this to you."

Q. Did she ask you what it was for? A. No.

Q. You didn't tell her? A. No.

Q. Don't you know, Laura, that when Mr. Wooldridge was there in the morning about ten o'clock, or in that neighborhood, and asked if George was there and wanted to know whether he wanted those potatoes, that your mother followed him out and closed the door and asked him to loan her a dollar; that you were hard up, had nothing to eat in the house, and asked him to loan her a dollar? Don't you know that to be a fact?

A. She never asked him that.

Q. She did not? A. No.

Q. How do you know?

A. Because I know it.

Q. Did you hear the conversation?

A. He gave her that dollar to give to me.

Q. Did you hear him?

A. No, I didn't, but I know mamma never asked him for that. He gave it to her himself.

Q. You know that that is not true. Were not you, as a matter of fact, without provisions and

(Testimony of Laura Herrington.)

things to eat in the house at that time?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts. Exception allowed.) [173]

Q. When did your father come home and when did your mother come home that night?

A. I don't remember.

Q. Do you remember about when they came home, Laura?

A. Well, my mother was drinking that night, so I don't remember what time she came home.

Q. Would that have anything to do with your memory as to when she came home?

A. She always comes home so late when she is drinking.

Q. When did your father come home?

A. I didn't look at the time.

Q. Was he drinking? A. Yes.

Q. Had you retired, or gone to bed, Laura, when they came home?

A. I think I was waiting for some time.

Q. You think you were waiting. Did you tell your father what had occurred there? A. Yes.

Q. All the details? A. Yes.

Q. What did he say? A. I don't remember.

Q. Not a thing? You remember nothing about it, as to what you told him?

A. I told him about Wooldridge coming late.

Q. What did he say? A. He laughed.

Q. He laughed again. Did he tell you that you were to try and trap him again, or anything to that

(Testimony of Laura Herrington.)

effect? A. No. [174]

Q. He didn't. Did you tell him at this time about this alleged appointment that you had with Wool-dridge down some other place?

A. Yes. I told him about that.

Q. What did he say to that? Did he laugh again? What did he say, Laura, or do?

A. I don't remember.

Q. You remember nothing about what he said, or what he did. Did he say it was all right, or all wrong, or what did he say? A. I don't remember.

Q. Was that in the evening that you told him that?

A. Yes.

Q. Do you remember what time? A. No.

Q. You don't remember a thing that he said. Have you been talking with Mr. Roth since the adjournment of court this evening at half-past five?

A. What do you mean?

Q. Just exactly what I say. Have you been talking with Mr. Roth between the time we quit at half-past five—

The COURT.—Maybe she doesn't understand what "adjournment" means.

Mr. MARQUAM.—Since have-past five—You know when Court closed up and you went away—and the time you were on the witness-stand, have you been talking with Mr. Roth? A. No.

Q. Have you been talking with any of his assistants? A. No.

Q. Have you been talking with Mr. Miller or any of the deputy [175] marshals? A. No.

(Testimony of Laura Herrington.)

Q. Have you been in Mr. Roth's office? When did you come down from your house? Were you home for dinner to-day?

A. Yes. I went home for dinner.

Q. What time did you come down to the courthouse? A. About fifteen minutes to two.

Q. I mean this evening since adjourning time, since dinner time—supper time, we will call it. What time did you get to the courthouse this evening?

A. I don't know. I left aunty's at ten minutes to eight.

Q. Did you talk to your father since you left here at half-past five? A. I saw daddy there.

Q. Where, at home? A. No. Here.

Q. Has anybody, any of these people I have mentioned, or anybody else, told you that you had better answer upon the stand in answer to my questions, that you don't remember? Did anyone tell you to say that? A. No.

Q. Well, who did you tell about this affair up there at the house, besides your father?

A. My mother.

Q. And your mother. And who else?

A. Ed. Hall.

Q. Who else? When did you tell Ed. Hall?

The COURT.—Just a minute. The “affair up at the house” may not be sufficiently definite. [176]

Mr. MARQUAM.—Q. What I mean, Laura, about the affair up at the house, is about the time that Mr. Wooldridge came there in the evening that you told

(Testimony of Laura Herrington.)

about. That is what I refer to as "that affair." Who did you tell about that besides your father and your mother and Ed. Hall?

A. I don't believe I told anybody else.

Q. Did you tell Mr. Roth?

A. I don't remember.

Q. You don't remember whether you ever told him.

A. I might have told him. He might have heard it when I was in the marshal's office there.

Q. Were you telling Marshal Miller about it?

A. About Wooldridge coming down to my place?

Q. Yes.

A. Yes. I told Marshal Miller about it.

Q. When? A. I don't know.

Q. Was it that night or the next day?

The COURT.—Q. Do you remember when you first told Marshal Miller about Mr. Wooldridge being down to your house, as you have stated? Was it the next day?

A. Yes. I think it was the next night.

Mr. MARQUAM.—Q. The next night. Where were you? A. In Mr. Roth's office.

Q. And what time that evening was it?

A. We went there at seven-thirty.

Q. Was that before you went up to Rose's repair shop? A. It wasn't on the same evening.

Q. It wasn't on the same evening.

A. No. [177]

Q. I understood you to tell us, Laura, in answer to Mr. Roth's questions, that it was the next evening

(Testimony of Laura Herrington.)

after Mr. Wooldridge had been up to your house that you were to meet him at Rose's repair-shop. Isn't that true? Didn't you say that a while ago? I may have misunderstood you, but I understood you to say that the appointment you made with Wooldridge up at your house that evening was for the next evening up at Rose's repair-shop. Didn't you say that?

A. Well, I made two arrangements.

Q. What were the two arrangements?

A. Well, that night he came at eight-thirty so we made arrangements to go up to Rose's shop the next evening.

Q. That is what I thought. That is what I understood you to say before. And you were to be up there at eight o'clock, weren't you, or half-past eight, or what was it? A. Eight.

Q. Was it half-past seven, just a half hour before, that you were in Roth's office and Miller was there and you were telling about this, about what happened up at the house the night before?

A. I don't remember that either.

Q. Where did you go from—Where were you when your father took you and walked with you as far as the corner of the First National Bank?

A. I came home.

Q. Then you must have been mistaken about your being up to Mr. Roth's office at half-past seven the next evening, aren't you? What do you have to say to that, Laura? (No answer.) Let me ask you this question: From the time you say [178] Wooldridge was up at your house at half-past eight,

(Testimony of Laura Herrington.)

from that time until you went up to Rose's repair-shop, had you talked with Mr. Miller and Mr. Roth between those times?

A. I met Mr. Miller on the road.

Q. What road?

A. Going up to Mr. Rose's.

Q. When you were on your way up? A. Yes.

Q. Well, did you talk with him?

A. Yes. We stopped and talked.

Q. Where did you meet him?

A. By the N. C. back.

Q. By the N. C. Anybody with you besides?

A. My daddy.

Q. Was that when you were coming up from the house? A. Yes.

Q. Was that on Front Street?

A. No. Back of the N. C.

Q. Was Mr. Miller waiting for you?

A. No. He was just coming up.

Q. He was coming up the street too? A. Yes.

Q. And walking along with you?

A. Walking a little ways.

Q. You knew when you started from home where you were headed for and where you were going, didn't you? A. Yes.

Q. And your father knew? A. Yes.

Q. And Miller knew? A. Yes. [179]

Q. Where did Miller find out? Had you talked with him in the meantime?

A. I had talked with him, but I don't remember when it was.

(Testimony of Laura Herrington.)

Q. You can't fix the time? A. No.

Q. You must have talked with him, because he gave you some instructions before you went up to Rose's repair-shop as to what to do and what to say, or how to talk, to talk loud? Did he tell you to talk loud up there? A. Yes.

Q. Where were you when he told you that?

A. By the N. C.

Q. Didn't he tell you that before it was arranged for you to go up there to Rose's repair-shop?

A. He told me right then.

Q. Is that the first time he told you, or can't you think and determine?

A. No. It was not the first time.

Q. Just think back and tell us where the first time was that he talked to you, and who was present. Can you do that, Laura? Was it up in Mr. Roth's office? (No answer.) Can you tell that? Was it in the marshal's office? A. No.

Q. Was it at your house?

A. It might have been, but I don't remember.

Q. It might have been up at your house.

A. I am not sure.

Q. You are not sure whether it was in Mr. Roth's office or not. A. I am not sure. [180]

Q. Wherever it was, you had a talk with Marshal Miller, and, wherever it was, Mr. Roth was present at the time? A. Mr. Roth was always present.

Q. Mr. Roth was always present all right. Was any other person present at that time?

A. My daddy.

(Testimony of Laura Herrington.)

Q. And your daddy. Anybody else?

A. No.

Q. You think not. Well, now, at that meeting Laura, wherever it was, when Mr. Roth and Mr. Miller and your daddy were present, it was talked over as to what you were to do, was it not; wasn't it talked over, Laura, so that when you did go up to Rose's, you went up there to carry out a program or an arrangement you had talked over? Isn't that true?

A. Yes.

Q. Tell this jury what your instructions were, and what you were supposed to do, and what they told you to do or say?

A. I was supposed to talk loud.

Q. And what were you supposed to say?

A. They didn't tell me what to say.

Q. Just told you to talk loud? A. Yes.

Q. You knew what you were going there for, didn't you? A. Yes.

Q. Did you know that they would be listening or peeking through a hole somewhere to hear or see what was going on?

A. I knew somebody would be around.

Q. You knew it would be some of the marshals but you didn't know which one? A. Yes. [181]

Q. Do you know whether they had this machine that you described a while ago that was up at your house?

A. I don't know.

Q. Attached around somewhere?

A. I don't know.

Q. Well, now, when you came up the street, back

(Testimony of Laura Herrington.)

on Second Street, back of the N. C., you came along with your father and then Mr. Miller joined you and walked along with you. Now, where did he leave you?

A. I think it was by the telephone office.

Q. And you and your father went on up to the corner of the First National Bank, and then you went on up Second Street, did you? A. Yes.

Q. And where did your father go?

A. He went up town.

Q. Whereabouts? Which way did he go after he left you?

A. Up towards the Fairbanks Corner.

Q. Now, on your way from the corner here of the First National Bank after your father left you, in going up to Rose's did you meet anybody?

A. I saw a woman coming up the street.

Q. What I mean is; any of these men that you knew, these deputy marshals. Did you see any of them? A. No. I didn't see any of them.

Q. Up on the corner—You know where Mrs. Wilson's bath-house is, up there at the corner as you turn around and go down towards Rose's repair-shop? A. Yes. I know. [182]

Q. Did you see anybody there, any of the marshals? A. No.

Q. You turned. Did you walk directly up Second Street and turn around the corner and go down to Rose's repair-shop?

A. A woman was coming up the street, so I walked up a ways and then came back.

(Testimony of Laura Herrington.)

Q. Up which way? A. Toward Bill McPhee's.

Q. Past Rose's shop? A. Yes.

Q. Did you look in?

A. Yes. And I saw—(interrupted).

Q. What did you see? A. A light.

Q. Anything else? A. No.

Q. Nothing else? A. No.

Q. Was there a light in the front room?

A. No.

Q. Wasn't there a light in the outer part of that room? A. In the back room.

Q. None in the front room.

A. None in the front room.

Q. You went down towards Bill McPhee's and then you came back. A. Yes.

Q. How far did you go down, as far as the corner before you turned around and came back?

A. Just as far as the corner.

Q. Well now, why—When you saw a woman in that neighborhood, why did you hesitate to go in? [183]

A. I didn't want her to see me go in.

Q. You knew that people knew—a good many people knew you were going there?

A. No. I didn't know that.

Q. You knew that the marshals and Mr. Roth and your father knew that you were going there, didn't you? A. I knew that.

Q. And still, notwithstanding that fact, you didn't want this woman, whoever she was, to see you go in there. Is that true? Now, why was that? Why was that, Laura, that you didn't want this woman to

(Testimony of Laura Herrington.)

see you? A. I don't know.

Q. Was she a stranger to you? A. Yes.

Q. You didn't know who she was. A. Yes.

Q. Where was she when you first saw her.

A. Coming down the street.

Q. Whereabouts on the street?

A. She was coming up towards Rose's.

Q. From McPhee's side? A. No.

Q. Then coming down the street.

A. This other way.

Q. Did you continue on until she passed you?

A. Yes. I walked slowly, and she passed me.

Q. And she passed you and went around the corner, did she, or turn up Front Street?

A. She went up this way. (Indicating.)

Q. She went up Front Street. A. Yes. [184]

Q. And as soon as she turned the corner and got out of sight, you went back? A. Yes.

Q. Had you been walking fast or slow coming up the street?

A. I was walking. I wasn't walking very fast.

Q. Were you calm and collected? You understand what I mean. A. Yes.

Q. Were you calm and collected when you walked into Rose's repair-shop? A. Yes.

Q. Were you nervous? A. No.

Q. You were not? A. No.

Q. Not a bit?

A. No, I don't see why I should be.

Q. You were not a bit nervous? A. No.

Q. Just as calm as you are now on the stand?

(Testimony of Laura Herrington.)

A. Yes.

Q. Just tell us now, when you walked into the front door, what was the first thing that was done, or what was the first thing that was said.

A. I walked in there and I think Mr. Rose said, "Hello." And I walked around the room a while. Then Mr. Wooldridge got up and buttoned his coat up, and he said, "Well, I guess I will go out for a walk."

Q. Mr. Wooldridge said that?

A. Yes. And Mr. Rose said, "Aren't you going to take Laura along with you?" "No," he said, "I will leave Laura for you."

Q. Just repeat that again. (Objection by plaintiff.) [185]

Q. You say that Mr. Wooldridge said that he was going to take a walk? A. Yes.

Q. That was not Mr. Rose.

A. It was not Mr. Rose. It was Mr. Wooldridge.

Q. Mr. Wooldridge. And he got up and buttoned his coat? A. Yes. He buttoned his coat.

Q. That was how long after you went in there?

A. A few minutes.

Q. About how long?

A. A few minutes, I said.

Q. I know, but that is indefinite. Was it a minute, or two minutes, or three minutes, or ten minutes? A. I don't know.

Q. And Rose said to him, "Aren't you going to take Laura with you?" A. Yes.

Q. And he said to Mr. Rose, "No, I am going to

(Testimony of Laura Herrington.)

leave her to you."

A. He said, "I am going to leave Laura for you."

Q. Did he go out?

A. He went into the other room.

Q. Who, Wooldridge? A. Yes.

Q. Well, what did you do?

A. I stayed in the other room.

Q. You mean by the other room the back room?

A. The back room. Yes.

Q. Where was Rose?

A. He was lying on the bed. [186]

Q. Still lying on the bed? A. Yes.

Q. Well, what else occurred?

A. And then, a little while after, Mr. Rose got up and went into the other room and they whispered; then Mr. Wooldridge came back and he told me to turn out the light, somebody might see me.

Q. Did you turn out the light? A. Yes.

Q. All this time, as I understand you, the light in the front room was out? A. Yes.

Q. Was it, at any time when you were in there, turned on?

A. After they *would* out somebody was watching them.

Q. How is that?

A. After they found out somebody was watching them.

Q. After they found out somebody was watching them, then they turned on the light? A. Yes.

Q. In the front room? A. Yes.

Q. And in the back room?

(Testimony of Laura Herrington.)

A. No. The back room light was out.

A. The back room light was out all the time that you were there, in complete darkness? A. Yes.

Q. You and Mr. Rose and Mr. Wooldridge—

A. No.

Q. Well, who?

A. Mr. Wooldridge told me to turn out the light, and I did. [187]

Q. Then where was Mr. Rose and Mr. Wooldridge? A. He went back into the other room.

Q. They were in the front room? A. Yes.

Q. And you were in the back room all alone with the light out? A. Yes.

Q. And they were neither one of them near you?

A. No.

Q. Now, when you came into that store, didn't you say to Mr. Wooldridge, or whoever you saw first of the two, that somebody was following you and you wanted to get in behind there and hide, or get out of sight? A. No, sir. I didn't.

Q. Any such words as that? A. No such words.

Q. No such words? A. No.

Q. Well, did Wooldridge and Rose continue to stay out in the front room?

A. No. Mr. Rose came back and he said, "Laura, you better come away because there is somebody watching."

Q. Better come away because somebody is watching. How long were you in there altogether? Give us some—as near as you can, some correct idea, from the time you went in there until Mr. Rose told you

(Testimony of Laura Herrington.)

that you better go out because there was somebody watching.

A. You mean, after I turned the light out?

Q. No. I mean from the time you went in first; from the time you walked in the place until Mr. Rose said to you that [188] you better go out.

A. I have no idea.

Q. Can't you give the jury some idea?

A. No.

Q. Well, then, do you know, judging from the time that you left your house down there—I presume you know what time that was. If you do, give us as near a correct idea as you can of when you arrived at Rose's repair shop.

A. I didn't look at the clock to see.

Q. Were you not interested to know? A. No.

Q. You didn't care what time it was? A. No.

Q. You had an appointment at eight o'clock, didn't you?

A. Yes. I knew what time it was when I left home.

Q. Didn't you intend to keep that appointment promptly? A. Yes.

Q. Then, you were interested in what time it was.

A. After I got there I wasn't interested in the time.

Q. Do you know whether you got there in time to keep your appointment, that is, at the hour, or the exact time, or were you late, or ahead of time?

A. I don't know. I didn't look at the clock.

Q. Now, isn't it true, Laura, that when you passed

(Testimony of Laura Herrington.)

along the street there, in front of Rose's bicycle shop or repair shop, that when the front light in the main room is turned out and the light in this back room of the partition is turned on, that a person passing along the street can more easily [189] see in the back room than if the front light is on? Isn't that true? A. Yes.

Q. That is true. What was the first remark that you made after you went in there, either to Mr. Wooldridge or to Mr. Rose?

A. I don't remember of talking.

Q. Do you remember?

The COURT.—Do you mean in the shop or in the back room?

Mr. MARQUAM.—From the time that you went into the shop, or into the back room. If there was nobody in the front room, you said nothing then, of course; you simply walked through the front room and walked into the back room where they were. Isn't that true? A. Yes.

Q. That is what I understood you to say. Now, when you got into the back room, what did you say first? A. I don't remember of talking.

Q. Do you remember of saying a word or anything from the time that you got in until you went out?

A. I think the first time I talked was when Wooldridge told me to turn the light out. I said, "What do you want me to turn the light out for?"

Q. What did he say?

A. He said he didn't want people to see me in there.

(Testimony of Laura Herrington.)

Q. Where was Mr. Rose at that time?

A. In the front room.

Q. Was Wooldridge in the front room too?

A. No. He was talking to me then. [190]

Q. How close was he to you?

A. I don't know. I didn't take time to measure.

Q. How close was he to you at the time he was talking to you? A. Not so very close.

Q. Give us some idea. How close was he to you?

A. I have no idea to give.

Q. What was the closest Wooldridge was to you at any time that evening?

A. I don't know. I didn't take notice of those things.

Q. Did he touch you at any time? A. No.

Q. He never laid his hands on you?

A. Not that I remember of.

Q. You would remember it if he had?

A. I don't know.

Q. You were instructed by either one of the three, Mr. Roth, or Mr. Miller or your father, that you were to talk loud in there, were you not?

A. Yes.

Q. And then after you did get in there and these people were there, all you said was to Mr. Wooldridge: "What do you want me to turn the light out for?" That is all you said. Is that true?

A. No. That was not all.

Q. Well, what else was there? Just tell us all. I asked you a while ago to tell us all. What else did you say?

(Testimony of Laura Herrington.)

A. I don't see how people could see me. I was standing out of the way so they couldn't.

Q. You didn't say to him that people couldn't see you. Was [191] there anything else that you said to him? A. No, not that I remember.

Q. Not that you remember. Were you standing in back of that partition to one side of the entrance?

A. Yes, sir.

Q. Near the bed? A. Yes.

Q. Were you on the bed? A. No.

Q. How close were you?

A. I don't know how close I was.

Q. Standing up? A. Yes.

Q. You didn't sit down at any time?

A. After the light was turned out, I sat down.

Q. On what? A. On a chair.

Q. You didn't sit down on the bed? A. No.

Q. At no time? A. No.

Q. Was Mr. Wooldridge standing up?

A. He was sitting down when I went in there.

Q. After you got in there was he standing up or sitting down? A. He got up.

Q. Did he have a fur coat on?

A. I told you before, he did.

Q. Did he keep it on all the time you were there?

A. Yes. [192]

Q. Mr. Rose, when you got in there, was lying on the bed in his shirt sleeves, was he not?

A. He was dressed.

Q. Fully dressed?

A. Well, that is what I said; he was dressed.

(Testimony of Laura Herrington.)

Q. Did he have a coat on? A. No.

Q. That is what I am asking you. A man who has not got his coat on, we speak of him as being in his shirt sleeves. Is that the way he was?

A. Yes. He had a shirt on.

Q. When did he put his coat on?

A. Who, Mr. Rose?

Q. Yes.

A. I don't remember of seeing him put his coat on.

Q. You never did see him put his coat on?

A. He might have put one on when we went to the marshal's office. I don't know. He had one on then.

Q. You are quite sure those two remarks you made were all that was said by you while you were in the house? A. I said I wasn't sure.

Q. When Mr. Wooldridge said to Mr. Rose, "I am going to leave Laura for you." Is that what he said "for you" or "with you," or "for you"? What did you say? A. He said "for you."

Q. What did you say?

A. I didn't say anything.

Q. What did Mr. Rose say?

A. "Hadn't you better take Laura along with you"? [193]

Q. And what did Wooldridge say?

A. "No. I am going to leave her for you."

Q. "Going to leave her for you." Did he start to go out then?

A. He went out into the front room.

Q. With his coat and hat on?

(Testimony of Laura Herrington.)

A. Yes. He had his coat and hat on.

Q. Apparently leaving the place.

A. I don't know. He didn't leave it.

Q. Why?

A. He stayed in the room until Mr. Rose came in.

Q. I am talking about the time that he started out and said he was going to leave you to Mr. Rose.

A. I told you he stayed in that room.

Q. In the back room? A. In the front room.

Q. In the front room. He was just standing there and talking that way, without making any move towards the door to go out. Is that the fact?

A. After Mr. Rose went into the front room, he talked to Mr. Rose.

Q. What did he say to Mr. Rose?

A. I don't know. I didn't hear.

Q. Did you try to hear?

A. No, sir, I didn't.

Q. You were not interested in knowing?

A. No.

Q. And then before anything else happened, somebody came to the front door, did they?

A. Well, after Mr. Rose came in and told me to come away; that he thought somebody was watching. [194]

Q. Had he been outside, that is Rose?

A. They were standing in the doorway.

Q. And he came back and said that you had better get out of there?

A. Yes, that I had better go out.

Q. Did he say why?

(Testimony of Laura Herrington.)

A. Somebody was watching.

Q. Is that all you know— A. That is all.

Q. —about it? How long was it then before the marshals came in?

A. I was just going to the door when they came in.

Q. Going out the front door? A. Yes.

Q. Who came in?

A. Hall and McMullen I think.

Q. Who else? A. And a little short fellow.

Q. A short fellow, a marshal?

A. I don't know.

Q. Did you ever see him before?

A. No. I never saw him before.

Q. Have you seen him since? A. No.

Q. It was not this gentleman who is in court here (indicating Peter McMullen).

A. He came in with Mr. Hall.

Q. Mr. Hall and Mr. McMullen.

A. And that little short fellow; the three of them.

[195]

Q. You don't know who it was?

A. No. I have no idea who it was.

Q. Did you see him afterwards?

A. No. Well, he walked up to the place here.

Q. That is the first time and the last time you have ever seen him, is it? A. Yes.

Q. Was he just a casual passer-by there and happened to drop in or was he with the marshals?

A. He was with these men. I know he came and sized me up and said: "Yes. That is the girl."

(Testimony of Laura Herrington.)

Q. Who did he say that to? A. I don't know.

Q. That is to these other officers?

A. I guess that is who it was.

Q. You knew who Mr. Hall was?

A. I had no idea who they were. I was surprised to see them.

Q. Didn't you know those men were to be watching around there?

A. I didn't know they were marshals. It was the first time I ever knew of it.

Q. Then what did you do?

A. I was surprised. That is all.

Q. Where did you go?

A. I stayed there until we came up to the marshal's office.

Q. Did this little short fellow go with you up there? A. I didn't notice.

Q. Who did go up with you to the marshal's office?

A. Marshals Miller and Hall, and Mr. Rose, and Mr. Wooldridge.

Q. And that ended that affair, did it, as far as you know? A. Yes. [196]

Q. Did you ever see Mr. Wooldridge or have any other appointment or date with him? A. No.

Q. You have had some difficulty in recollecting and remembering your story from that time up to the present time, haven't you, Laura? A. Yes.

Q. You have had frequent talks, conversations, with Mr. Roth in his office going over this matter, haven't you? A. Yes.

(Testimony of Laura Herrington.)

Q. And on a great many of those occasions you couldn't remember and he would help you to remember, wouldn't he? A. Yes.

Q. And sometimes you would tell *and* different story than you had told before, wouldn't you?

A. I don't know.

Q. You might have? A. I don't know.

Q. Do you remember one time that you were in Mr. Roth's office with your step-brother, Henry McPhee? A. Yes.

Q. And that you were having difficulty in remembering the correct story; that you had told a different story, and that Mr. Roth said to you: "Stick to what you have said, no matter what it was"?

A. Yes, I remember that.

Q. Isn't that what you have been doing since then; been trying [197] to follow those instructions?

A. I have told nothing but the truth.

Q. That is what he told you: To stick to what you had said, no matter what it was?

A. Stick to the truth. Yes.

Q. I ain't asking what else he said. But he used that expression to you and told you in the presence of your brother, or your step-brother, to stick to what you had said, no matter what it was?

A. Yes.

Q. He used those words? A. Yes.

Q. How many times were you up to Mr. Roth's office going over this matter?

A. I didn't stop to count.

Q. How many times after you lost track of it?

(Testimony of Laura Herrington.)

A. I have been up here quite a few times.

Q. Every day, haven't you? A. For a while.

Q. Mr. Roth has been down to your house?

A. Yes.

Q. How many times? A. Once.

Q. When was that? A. Sunday.

Q. What was he doing down there Sunday?

A. He came down and asked about some men.

Q. What men?

A. I don't know. He had a list of names. I didn't know them. [198]

Q. He brought the jury list down to you and asked you what you thought of them?

A. I don't know whether it was the jury.

Q. You don't know what list that was that he had down to your place?

A. Well, it was a list of names, I know.

Q. Don't you know those are the list of names of the trial jury in this court that he came down there with and submitted to you?

A. It might have been.

Q. Don't you know that?

A. Daddy said it was the jurymen.

Q. And he asked you—went all over that list one by one to find out if you knew them?

A. Yes. He wanted to know if I knew them.

Q. And you told him something about a man that was on this regular panel of jurors, and he said: "We won't have him on this jury."

A. He didn't say that.

Q. What did he say?

(Testimony of Laura Herrington.)

A. I don't know what he said.

Q. You are sure he didn't say that.

A. No, he didn't say that.

Q. What did he say?

A. I don't remember what he said.

Q. You told him about some man, naming some man on this regular panel of jurors? A. Yes.

Q. And what did he say to that? Didn't he say he wouldn't [199] have him on the jury?

A. No, he never said that.

Q. He came down there to have you size up the jury list. Is that right?

A. We talked about it.

Q. Talked them all over, did you?

A. Talked what over? About this Wooldridge?

Q. No. About these men on this jury list.

A. He asked me if I knew them, and I told him that I didn't, but there was one I knew.

Q. But there was one you did know. Well, what did Mr. Roth ever promise you in connection with this case or your testimony in this case, if anything?

A. He didn't promise me anything, but he told me this would give me a good name.

Q. This would give you a good name?

A. Yes, by telling on these men.

Q. With whom was this to give you a good name?

A. Well, he told me I had a bad name before.

Q. And when you told you would have a good name? A. After all this was through.

Q. That you would have a good name, and you believed that. A. Yes. I believed it.

(Testimony of Laura Herrington.)

Q. Well, what besides that. Besides what was going to happen to you in that respect, what did he say he would do for you?

A. He didn't say he would do anything.

Q. He didn't say he would do anything?

A. Nothing that I remember of.

Q. Well, now, let me ask you if Mr. Roth didn't say this to you [200] in the way of what he was going to do: "All the women in Fairbanks except two or three are my friends and they will be your friends, and all the society women will be your friends"?

A. He didn't say that all the society women would be my friends.

Q. He didn't say that? A. No. He didn't.

Q. You are sure of that?

A. I am sure of that.

Q. What did he say?

The COURT.—Are you asking these questions for impeaching questions? If you are, Mr. Marquam, I think you really ought to fix the time and place and persons present.

Mr. MARQUAM.—I will fix the time, inasmuch as that is a denial of it.

Q. Let me ask you this question, Laura: If, at your house on March 2, 1916, yourself and your half-brother and your mother and your sister Catherine—or half-sister— She is your half-sister, isn't she?

A. Yes.

Q. And your half-brother, Henry, being present, you didn't say to them—(interrupted).

(Testimony of Laura Herrington.)

The COURT.—What was the time?

Mr. MARQUAM.—March 2, 1916. That is, I will put it on or about that date, that is as near as I can fix it. I will fix it on that date.

Q. (Continuing.) Didn't say to them that Mr. Roth told you and said this to you in substance and effect: That he had said to you in his office just a short time before this that "all the women in Fairbanks except two or three are my [201] friends, and they will be your friends, and all the society women will be your friends."

A. He didn't say all the society women. He never mentioned those at all.

Q. The question is not what he said to you, but what you said to your half-brother and half-sister and your mother.

The COURT.—The question is, Laura: Did you tell your half-sister and your mother and half-brother that.

A. No. I told him Mr. Roth said all the good people in this town will be my friends. That is what I told my mother, brother and sister.

Mr. MARQUAM.—Q. You didn't tell them, or at least, one of them, or more of them, in the presence of all of them, that Mr. Roth was going to put you in society? A. He never said that.

Q. The question is not whether he said that. Didn't you tell these people that I have mentioned that he said it?

A. No. I don't remember of that.

Q. You didn't tell Catherine that?

(Testimony of Laura Herrington.)

A. Not that I remember of.

Q. Nor Henry McPhee?

A. No. I don't remember telling him that.

Q. Didn't you, then, Laura, after having said that, tell Catherine that you would stick up your nose at these people that you had known here before? Didn't you tell her that, or words to that effect?

A. I told her I wouldn't speak to my cousins any more as long as they wouldn't speak to me.

Q. Didn't you tell them in substance and effect that after Mr. [202] Roth had done all these things for you, you were going to stick up your nose at all these people you had known before?

A. No, I don't remember saying that.

Q. You don't deny that you did say that?

A. No, I don't remember.

Q. Did Mr. Roth promise you anything else?

A. No.

Q. Or say anything else to you— A. No.

Q. You say he did not? A. I said that.

Q. I will ask you if in his office on the 3d day of March, 1916, yourself and Catherine, your half-sister, being present, and Mr. Roth, Mr. Roth didn't say to you: "I may get you a position outside"?

A. Yes. He said that.

Q. Did you consider that a promise? A. No.

Q. What did Mr. Miller say to you in regard to what you should say when you came on the witness-stand, as to these happenings that you told about; what directions did he give you?

(Testimony of Laura Herrington.)

A. Stick to the truth, no matter what it is.

Q. He didn't say anything else, of any other character? A. Not that I remember of.

Q. Let me ask you this question: If you told—if you made this statement upon the 22d day of February, 1916, at Mrs. Cooley's house, Mrs. Cooley, Henry McPhee, your half-brother, and yourself being present; that Miller told you in Roth's office, "If you have told a lie, stick to it"? Did you tell them that?

A. No, not that I remember of. I had a fight with Henry over that. [203]

Q. You had a fight with him over that?

A. Yes. I don't remember saying anything of the sort.

Q. What did you have a fight with him over?

A. Because I don't remember saying anything like that. I don't see why they should get it against me.

Q. Why was there any occasion—(interrupted).

A. Because I never said it. I don't remember saying anything like that. I don't see why they get that against me.

Q. Well, I am just asking you if you said it?

A. Well, I haven't said it. I don't see why I should say it against Mr. Miller, when he never said it.

Q. I don't know either.

A. He always told me to tell the truth, and which I have told.

Q. And I believe that absolutely, but I am asking

(Testimony of Laura Herrington.)

you if you didn't tell them,—(interrupted).

A. No, sir.

Q. —what I have just quoted.

A. I don't remember ever saying anything of the sort.

Q. You might have said it?

A. No. I don't think I have.

Q. You know that these people that I have mentioned say that that is what you said?

A. That is what they told me I said.

Q. And that is what you mean, by having a fight with them about it? A. Yes.

Q. You are insisting that you didn't say it?

A. I know I didn't say it.

Q. They insisted that you did say it. [204]

A. They say I said it.

Q. Your half-brother said that.

A. And so did Mrs. Cooley. She said, "Laura, you did say it." And I said, "I didn't," which I didn't say. I know I didn't say it.

Q. But Mr. Roth did say to you: "Whatever you have said, stick to it, no matter what it is"?

The COURT.—You need not answer that question. It has been answered four or five times.

Mr. MARQUAM.—All right.

(Trial continued until 10 A. M. to-morrow morning; and the jury, after being admonished as usual, withdraw in charge of the bailiffs. March 9, 1916, 10 A. M. Defendant and his attorneys, and the district attorney and the jury are present, and the trial is resumed.)

(Testimony of Laura Herrington.)

LAURA HERRINGTON, continues on cross-examination.

By Mr. MARQUAM.—Q. Laura, what time was it that you first knew about or heard about the dictaphone; when did you first know that that was being placed in the house, or going to be placed in the house? A. That same night.

Q. When they came up there? A. Yes.

Q. That is the first you knew about it?

A. Yes.

Q. Did you know before that that some of the deputy marshals, or somebody else, were going to be around there and listen and overhear anything that might be said? A. Yes.

Q. When did you first learn of that, Laura?
[205] A. When Miller talked to me.

Q. That same day or before that?

A. I don't remember.

Q. Well, now, that is not so important as to find out whether he explained to you the reason for his wanting to overhear what was said. Why did he want to overhear, or want somebody to overhear what was said between you and Mr. Wooldridge if he came there, if you know?

(Plaintiff objects as previously asked of and answered by the witness. Objection sustained.)

Q. Laura, I will ask you this: As to whether or not it was to get further evidence with regard to some—about this time that you were up in the cabin with Wooldridge, that you were telling them about; or to get some evidence about some other act, that

(Testimony of Laura Herrington.)

they wanted to overhear what was said?

A. They wanted to find out about the other time.

Q. That was all they wanted, was it? A. Yes.

Q. Do you know whether there was any hole bored in the roof or ceiling of this room at the time they put this machine up?

A. They bored a hole. They did bore a hole.

Q. What kind of a hole was that; large enough to see through, or just for the wires to go through?

A. Just for the wires to go through.

Q. Could they see from where they were upstairs down into the front room?

A. I don't know.

Q. You don't know whether they could or not. You said yesterday, Laura, that the first person that you had said anything to about this alleged affair up there in the cabin with Mr. [206] Wooldridge, was Ed Hall. A. Yes.

Q. You said that you had not spoken to your father or your mother about it because, I think you said, you were ashamed? A. Yes.

Q. You were not ashamed to tell Ed Hall about it?

A. No.

Q. Were you perfectly free to talk about sexual matters of that kind with Ed Hall?

A. I don't know. I always told him things.

Q. You told him things of that kind, did you?

(Plaintiff objects. Argument.)

Q. Answer this question directly: Were you free to talk to Ed Hall about matters of his kind, sexual matters? Were you free to do that?

(Testimony of Laura Herrington.)

A. I never talked over matters like this always with him.

Q. You always did?

A. No. I said I didn't always.

Q. Was this the only time?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—That is all.

Redirect Examination.

(By Mr. ROTH.)

Q. Laura, Mr. Marquam asked you about the coat that Mr. Wooldridge wore the night that you went with him to the cabin, whether or not there was fur on the outside or on the inside. Do you know that there was no fur on the inside of that coat?

A. No, there was not any fur on the inside.

Q. How do you know there was not any fur on the inside? [207]

A. Because I laid on it.

Q. How did you lay on it? A. On my back.

(Defendant objects as not redirect examination. Overruled. Defendant excepts. Exception allowed.)

Q. How did he lay on you, Laura, with his back, or with his front, or how?

(Defendant objects as not redirect examination. Plaintiff asks permission to ask these questions as part of the direct examination, and the Court grants

(Testimony of Laura Herrington.)

permission so to do. Defendant excepts, and is allowed an exception.)

Direct Examination (Resumed.)

Q. Now, answer the question, how did he lay on you, with his back, or with his front, or with his side, or how?

(Defendant objects as not redirect. The Court states that plaintiff asked and was given permission to ask the question not as redirect examination, and overruled the objection. Defendant excepts. Exception allowed.)

Q. Answer the question, Laura. Do you understand the question? A. Yes.

Q. Well, answer it. A. With his front.

Q. With his front. Now, when he was laying on you at that time, state whether or not his legs were apart.

(Defendant objects as not proper redirect examination, having been answered fully on direct examination,—there having been nothing further on cross-examination to justify such examination at this time. Objection overruled. Defendant excepts and is allowed an exception.)

Q. (Question read.)

A. Mr. Roth, I don't care to answer those kind of questions.

Q. I know that it is unpleasant, but answer the question.

(Defendant objects to any explanations on the part of counsel, and objects to any further questions; and the Court, directs witness to answer the question, and

(Testimony of Laura Herrington.)

directs the reporter to read the question. Whereupon the [208] reporter read the question as follows: "Now, when he was laying on you at that time, state whether or not your legs were apart." Defendant objects as not proper redirect examination, and for the further reason that it is leading and suggestive. Objection sustained as to its being leading and suggestive.)

Q. Now, tell the jury, Laura, if you can, what he did when he was laying on you at that time.

(Defendant objects as not proper redirect examination. Objection overruled. Defendant excepts. Exception allowed.)

Q. Answer the question, please. (No answer.)

The COURT.—Do you understand the question?

A. Yes.

Q. Well, answer the question.

A. I can't explain it.

Mr. ROTH.—Q. Can't you tell what he did?

(Defendant objects to counsel cross-examining his own witness; and the Court states that witness has answered the question by saying that she can't explain it.)

Q. I will ask you, Laura, if you know what is meant by the term "sexual intercourse."

(Defendant objects as not proper redirect examination, as all having been fully asked and answered on the direct examination of the witness. Objection sustained as having been asked and answered.)

Q. I will ask you this question: Did he at that

(Testimony of Laura Herrington.)

time have sexual intercourse with you?

(Defendant objects as not proper redirect examination, having been fully covered in the direct examination, and as being leading, and suggestive, Objection overruled. Defendant excepts. Exception allowed.)

Q. Answer the question. A. Yes.

(Defendant moves to strike from the record the questions and answers; the questions directed to this witness, and her answers, relative to any act of sexual intercourse testified to on her redirect examination, for the reasons stated in our objections to the admission of the testimony. Motion denied. Exception allowed.) [209]

Redirect Examination (Resumed.)

Q. You stated that you thought that this was in 1913, about Christmas. You said that you were in town at the Christmas vacation. Was it last Christmas vacation or last Christmas holidays, this last one, that you were in here on that visit from Ester?

A. Well, the last was in 1915.

Q. What? A. The last was 1915.

Q. Now, was it the Christmas before that?

A. Yes. I guess I am mixed up on that.

Q. It was the Christmas you lived at Ester, anyway.

The COURT.—Did you intend that statement as a question?

Mr. ROTH.—Q. Was it the Christmas while you lived at Ester?

(Defendant objects as leading and suggestive.

(Testimony of Laura Herrington.)

Objection overruled. Defendant excepts, and is allowed an exception.)

A. Yes.

Q. How many Christmases did you live in Ester?

A. One Christmas.

Q. Laura, Mr. Marquam asked you if you stated that in my office that I told you to stick to what you have said, no matter what it was, or something to that effect. What else did I say to you at that same time, if anything?

(Defendant objects as incompetent, irrelevant and immaterial, what else he said. Objection overruled. Defendant excepts. Exception allowed.)

A. I don't remember what else you said.

Q. How is that? A. I don't remember.

Q. Did I ever at any time intimate to you to tell anything that was not true? [210]

(Defendant objects as leading, suggestive, cross-examining his own witness, and trying to get an answer from the witness on a question she says she don't remember, and a party calling a witness has no right to cross-examine the witness unless the witness is hostile, and it is not apparent that this witness is hostile. Objection overruled. Defendant excepts. Exception allowed.)

A. Not that I remember of.

Q. What did I tell you in that respect?

A. What Mr. Marquam said.

Q. No. But with reference to telling the truth, what did I tell you always?

(Defendant objects as leading, suggestive, and

(Testimony of Laura Herrington.)

cross-examination of his own witness. Objection overruled. Defendant excepts. Exception allowed.)

A. You always told me to tell the truth.

Q. Mr. Marquam asked you about a time that I was with you down at your house on Sunday when I had a list of names, and you told him that you told me that you knew one man that was on the list: Is that one man that you spoke of sitting on the jury now? A. Yes, sir.

Q. That was Mr. Rosenthal? A. Yes, sir.

Mr. ROTH.—That is all.

Recross-examination.

(By Mr. MARQUAM.)

Q. With regard to the advice that Mr. Roth gave you, or the direction—I think that is clear in your memory—was to stick by whatever you said, no matter what it was. A. Yes.

Q. That is true is it? That is approximately correct; and he may have said something about these other things you [211] testified to?

A. I don't know.

Mr. MARQUAM.—You don't know. That is all.

Mr. ROTH.—Q. Who was present when I told you that; was Mr. J. H. Miller?

A. My brother may have been present, but I don't remember if he was.

Mr. ROTH.—That is all.

Mr. MARQUAM.—That is all.

Testimony of Ed Hall, for Plaintiff.

ED HALL, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Ed Hall.

Q. Where do you live? A. Fairbanks.

Q. What part of Fairbanks do you live in?

A. I live down just on Second Street across Bonni-field Street, the third house.

Q. Are you acquainted with Laura Herrington?

A. Yes, sir.

Q. How long have you known her?

A. Ever since she was a little child, a little baby.

Q. Do you remember where the Herringtons lived a year ago last Christmas?

A. They were living on Ester at that time.

Q. Did you see Laura during the Christmas holidays of that year? [212] A. I did. Yes, sir.

Q. Do you know what times she came to town, about?

A. The family came in Christmas week.

Q. Do you know how long they stayed in?

A. They stayed in I think until after New Years.

Q. Do you know where they stopped?

A. Al Morency's.

Q. Did you have any talk with Laura Herrington during that time concerning W. H. Wooldridge?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

(Testimony of Ed Hall.)

A. Yes, sir.

Q. Where did you have that talk?

A. At Al Morency's.

Q. When was that?

A. It was about I should judge two days before Christmas, two or three days before Christmas Eve.

Q. What did she tell you at that time?

(Defendant objects as incompetent, irrelevant and immaterial. Overruled. Defendant excepts and is allowed an exception.)

A. She told me that she was on her way home that evening—the evening she told me—and she said: “I met Mr. Wooldridge down at Gordon's Glass Block” and he wanted her to take a walk with him, and she went with him, she went up to a cabin across from his place, and she says that he done something to her and he gave her two dollars and a half, and she said he still owed her another dollar, is the way she explained it to me.

Mr. ROTH.—You may cross-examine. [213]

Cross-examination.

(By Mr. MARQUAM.)

Q. You are telling just exactly what she said?

A. That is as near as I can remember.

Q. Is that correct, or is it as near as you can remember? A. That is correct.

Q. Have you talked with her lately about it?

A. No, sir.

Q. You haven't talked with her lately.

A. Not about that. No, sir.

Q. Since when haven't you talked with her?

(Testimony of Ed Hall.)

When was the last time you talked with her about it?

A. That night was the last time I ever talked with her about that.

Q. Never mentioned it since.

A. Not to her, no, sir, or to anybody else.

Q. Did you tell her mother? A. No.

Q. Did you tell her father? A. No.

Q. They were here?

A. They were here at the time.

Q. Why didn't you tell them?

A. She asked me not to tell and she would tell me something, and I promised her I wouldn't tell.

Q. And that is the reason you wouldn't go to her parents with a thing like that and tell about it.

A. That is the reason.

Q. Did you go to Mr. Roth, or the district attorney that was here? A. No. [214]

Q. You kept it to yourself. A. Yes.

Q. When Mr. Wooldridge was being prosecuted, then who did you first tell about it in this case?

A. I told the grand jury.

Q. Did you just keep that right in your own mind?

A. I did.

Q. And never said a word to anybody about it, until you were called by the grand jury.

A. I did.

Q. You were being investigated by the grand jury yourself, were you not, Ed?

(Plaintiff objects as irrelevant, incompetent and immaterial. Sustained. Defendant excepts. Exception allowed.)

(Testimony of Ed Hall.)

Q. Are you on terms of such intimacy with this girl that she feels at liberty to come to you and tell you about having sexual intercourse with men?

A. She always used to tell me her little secrets. I never expected anything like that. That was the first time she ever expressed anything like that to me.

Q. Is that the last time?

A. It is not the last time, but it is the first time.

Q. Have you ever had sexual intercourse with this girl? A. I never have.

The COURT.—Mr. Marquam, you know better than to ask any such question of the witness on the stand.

Mr. MARQUAM.—I think it is a perfectly legitimate proper question, or I wouldn't have asked it, your Honor.

The COURT.—It is not a proper question, and you will not repeat [215] the matter of asking questions of that kind again.

(Defendant excepts, and is allowed an exception.)

Mr. MARQUAM.—Q. You say, Mr. Hall, that you know about when this girl was out on Ester Creek.

A. Yes, sir. I know when she was out there.

Q. Were you out on Ester Creek at that time?

A. I was on Ester Creek.

Q. What were you doing out there?

A. I went out to see a party.

Q. You went out to visit the Herringtons, these girls, or some of them? A. Not every time.

Q. You went out and visited them?

A. I have been out and visited the family.

(Testimony of Ed Hall.)

Q. And visited these girls.

A. Not to visit the girls. No, sir.

Q. Isn't it true that George Herrington at one time on Ester Creek, when you went out there to visit these girls, told you if you didn't get out there would be trouble for you—get away from Ester? Isn't that true?

(Plaintiff objects as irrelevant, incompetent and immaterial, not proper cross-examination. Objection sustained. Defendant asks and is given an exception.)

Q. How many times has Laura Herrington been to your cabin?

A. Oh, I couldn't tell you. She has been there a good many times.

Q. And you never—you want this jury to understand you to say that upon, or a day or two before Christmas—of what year?

A. Year before last Christmas. It would be 1914, wouldn't it?

Q. You are testifying. Never mind asking Mr. Roth. [216]

A. It was a year ago last Christmas.

The COURT.—The remark may be stricken from the record, "Never mind asking Mr. Roth."

Mr. MARQUAM.—He looked right at Mr. Roth when he asked that question.

A. (By WITNESS.) A year ago last Christmas.

Mr. MARQUAM.—Q. 1914?

A. Yes, sir.

Q. And from that time up to the time that you were

(Testimony of Ed Hall.)

called before the grand jury, you never told anyone, or intimated to any one, such a thing?

A. I never did.

Q. You claim to be a friend of this family.

A. I do.

Q. And you didn't think it was a proper thing for you to, in a kindly friendly way, inform the parents of this child that such a thing as that had occurred, so that a repetition of it would be more improbable?

A. I kept it to myself to shield the girl after promising her I wouldn't say anything.

Q. Has she told you since that time of other affairs of this kind with other people, with other men?

(Plaintiff objects as irrelevant, incompetent, immaterial and not proper cross-examination. Objection sustained. Defendant excepts. Exception allowed.)

Q. Mr. Hall, how do you remember that date so clearly? A. The date before Christmas?

Q. 1914, just before Christmas.

A. The way I locate it so thoroughly, every Christmas, every time the children have been here, I have always made them presents of some kind, candy nuts, or something. They [217] generally have a Christmas tree, and it is generally held at Mr. Morency's. Some years they don't have it, but most years they do, and I was always their Santa Claus.

Q. How does that fix this particular time as being a day or two before Christmas? You were at the Morency house many times? A. Oh, yes.

Q. Why does this explanation that you are giving

(Testimony of Ed Hall.)

aid you in fixing this particular date?

A. Because I hadn't got the presents yet; I hadn't got the stuff yet—the oranges and bells and stuff. I know it was just before Christmas.

Q. That is the way you fix it.

A. Yes, because I hadn't got them yet.

Q. That is the only way you fix it.

A. That is about the only way.

Q. She showed you two dollars and a half?

A. She showed me money. I didn't count the money. She opened her hand and showed me money.

Q. How much was in her hand?

A. She said there was two dollars and a half. I didn't count it at all.

Q. Is that the only time she showed you two dollars and a half and told you she got it from Wooldridge?

A. That is the only time. That is the only time.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all. [218]

Testimony of Catherine Herrington, for Plaintiff.

CATHERINE HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Catherine Deion.

Q. You are sometimes known as Catherine Herrington? A. Yes.

Q. Your mother is George Herrington's wife?

A. Yes.

Q. And, Catherine, where were you living or work-

(Testimony of Catherine Herrington.)

ing during the Christmas holidays of last Christmas a year ago?

A. I wasn't working no place.

Q. Last Christmas a year ago? A. No.

Q. Where were you living at that time?

A. Ester.

Q. Were you in town during last Christmas a year ago? A. Yes.

Q. Where were you stopping in town during that time? A. Morency's.

Q. Did you ever stop at Axel Running's?

A. Yes, when I worked for them.

Q. When was that? A. In the spring.

Q. What time did you come in from Ester at that time, Catherine; how long before Christmas?

A. It was after Christmas.

Q. That you came in from Ester?

A. Yes. [219]

Q. How long after Christmas?

A. About two months or so.

Q. Well, but I mean during the holidays. Didn't you come in for the Christmas holidays last Christmas a year ago? A. Yes.

Q. What time did you come in with reference to Christmas? Did you come in before or after Christmas? A. Came in before.

Q. How long before? A. About a week.

Q. How long did you stay in here?

A. Until after Christmas.

Q. Did I understand you to say that at that time you were not stopping at Running's?

(Testimony of Catherine Herrington.)

A. No, I wasn't.

Q. During that time, that you were in here in that visit from Ester, Catherine, did your sister Laura show you any money? A. Yes.

Q. How much? A. Two and a half.

Q. What did she say to you?

A. She said that she got that from Mr. Wooldridge.

Q. When was it that you say she told you this with reference to Christmas; was it before or after Christmas? A. It was after Christmas.

Q. How long after Christmas was it?

A. I don't exactly remember, but I know it was when I was working at Runnings. [220]

Q. I thought you said you were not working at Runnings at that time?

(Defendant objects to counsel cross-examining his own witness. Objection overruled. Defendant excepts and is allowed an exception.)

A. I was working for Running's at the time she showed me the two and a half. I was working at Running's, and that was after Christmas.

Q. That was after Christmas? A. Yes.

Q. Where were you when Laura showed you this?

A. On the street.

Q. Just what did she tell you?

A. She showed me the two and a half, and I asked her where she got it, and she said from Mr. Wooldridge.

Q. Was that all she said to you?

A. That was all she said.

(Testimony of Catherine Herrington.)

Mr. ROTH.—That is all.

Cross-examination.

(By Mr. MARQUAM.)

Q. Catherine, what time did you commence to work for Running?

A. About two months after Christmas, somewhere around in there. I ain't exactly sure.

Q. What was the occasion of your going to Running's, going to work? Do you remember, or do you know?

(Objected to by plaintiff; overruled.)

Q. What I mean by that, Catherine, is this. Was Mrs. Running sick, or was she at the hospital?

A. She was at home, sick.

Q. She had been to the hospital?

A. No. [221]

Q. She had been confined, had she not; didn't she have a child about that time? A. No.

Q. She was sick? A. She was just sick.

Q. Who hired you, Mr. Running or Mrs. Running; who made the arrangement?

A. I don't know just who hired me.

Q. You went to work there about the 5th day of February, did you not? A. I ain't sure.

Q. It was about that time?

A. About that time. Yes.

Q. And you worked for how long?

A. Two weeks.

Q. And it was during that time, was it not, that you met Laura on the street? You were going away from the house, and you met her on the street, and

(Testimony of Catherine Herrington.)

she showed you some money and said she had got it from Wooldridge? A. Yes.

Q. You are positive about the time that you had this conversation with Laura being the time that you were working for Running? A. Yes.

Q. And that couldn't have been anywhere near Christmas time?

A. No. It was after Christmas.

Q. But while you were working at Running's?

A. Yes.

Q. What was the condition of the weather at that time as far as being the really cold part of the winter, or was the [222] snow gone? A. Yes.

Q. Melting about that time? A. Yes.

Q. It was warmer than it had been previous to that? A. Yes, it was warmer.

Q. Did Mr. Roth ever talk this matter over with you before in his office, ask you about these things?

A. Yes.

Q. Did he ask you then in detail just about what time it was? A. Yes.

Q. What did you tell him then?

A. I told him it was about six o'clock in the evening.

Q. You didn't tell him anything, or he didn't ask you anything about the date? A. Yes.

Q. What date was it? What date did you tell him? A. I told him it was after Christmas.

Q. You didn't say how far after Christmas?

A. No, not that I remember.

Q. That is the only time that she ever showed you

(Testimony of Catherine Herrington.)

any money and said it came from Wooldridge?

A. Yes.

Q. And did you say it was two and a half?

A. Yes, I saw it.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

(Here the Court takes a short recess; jury, after being admonished, in charge of bailiffs; and subsequently return into court, and the defendant and his attorneys and the district attorney are present, and trial resumed.) [223]

Testimony of J. P. Rose, for Plaintiff.

J. P. ROSE, a witness for plaintiff, after being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. J. P. Rose.

Q. What is your occupation?

A. I have a shop here in the town, a repair shop.

Q. How long have you had that repair shop?

A. Well, I have been alone for about five years, but I was with Palmer a couple of years before that.

Q. Are you acquainted with W. H. Wooldridge?

A. I am, sir.

Q. Are you acquainted with Laura Herrington?

A. Yes, sir.

Q. Did you see W. H. Wooldridge on the 15th day of February? A. On the 15th?

Q. Yes. Of this year.

A. I believe I did, yes.

(Testimony of J. P. Rose.)

Q. The day after Valentine's Day? A. Yes.

Q. What time during the day did you first see him on that day?

A. I seen him in the morning, and I seen him in the evening along between 7 and 8 o'clock.

Q. Now, in the morning, about what time was it?

A. Oh, I couldn't hardly say. It was before noon. It might have been early and it might have been towards noon.

Q. At that time did he ask you to do anything for him? A. On the 15th?

Q. Yes. A. No.

Q. Did you see him the day before?

A. Yes, sir. [224]

Q. What time of day did you see him the day before, during the daytime?

A. He was in my place before noon, and in the afternoon, both.

Q. About what time in the forenoon did you see him?

A. I would say along 8 or 9 o'clock, or 10 o'clock maybe. I couldn't state the time. I paid no attention to it.

Q. At that time did he request you to do anything for him?

A. Which? On the day before?

Q. Yes. A. On the 14th?

Q. Yes.

A. No, not to the best of my knowledge he did not.

Q. Did he have any talk with you on the 14th about the Herringtons?

(Testimony of J. P. Rose.)

A. On the 14th I believe he told me that he took down a sack of potatoes there that morning.

Q. Did you at that time or at any time on the 14th buy anything for him?

A. Not on the 14th, no, sir.

Q. Did you on the 15th? A. No, sir.

Q. Did you on the 13th?

A. I think I bought a bottle of whiskey on the 13th.

Q. What did he say to you about buying a bottle of whiskey?

A. He simply said, "Would you mind stepping in and get me a bottle of whiskey. I don't care to go in myself."

Q. What did you say to him?

A. I told him, "Certainly."

Q. And where did you go and get it?

A. McPhee's. [225]

Q. Did you deliver it to him? A. I did.

Q. Did he tell you what he wanted to do with the whiskey?

A. No, I didn't ask him any questions, and he didn't tell me a thing about it at all.

Q. On the 14th during the day when he was in there, did he say anything about the Herrington's?

A. I made the remark myself that I had heard that Mrs. Herrington was on a drunk, and I asked him about the whiskey I gave him, whether it was him, and he said no.

Q. Did he say anything—was the name of Laura Herrington mentioned at any time during the 14th—

(Testimony of J. P. Rose.)

I mean, during the 15th?

A. Not as I have any recollection of. That is, he came to my place in the evening.

Q. But in the morning? During the day?

A. No. I don't remember that there was.

Q. Was there anything said between you and him during the day, or anything said by him upon the subject of him expecting to come there in the evening? A. On the 15th?

Q. Yes.

A. No. I look for him there any time. When he is town he will come to my place I will say five nights out of the seven.

Q. Now, on the evening of the 15th, what time did he come to your shop?

A. Oh, between half-past 7 and 8.

Q. What did he say when he first came in? [226]

A. He spoke about the lights, as he usually did, that I was extravagant in buying electricity, but he said, "I won't turn them out for you tonight."

Q. What did you say?

A. I just passed it off and said nothing.

Q. What did he do?

A. He sat down and talked to me a little bit, as we usually do.

Q. Were the lights turned out, or any of the lights turned out?

A. No. It was earlier—I generally made the rule of turning the light out at 8 o'clock. I make a rule of that myself.

(Testimony of J. P. Rose.)

Q. Was the light in the front room turned out that night?

A. No. Not yet, because it was not 8 o'clock. I think he left before 8 o'clock that night.

Q. Was the light turned out while he was in there, in the front room? A. This is the 15th?

Q. Yes.

A. I couldn't say. I don't think they was, because I don't think—I think he got up and left of his own accord, and I stayed back, if I remember just right.

Q. Did you see Laura Herrington in there on that night, the night of the 15th?

A. No. Not the night of the 15th.

Q. What night was it that you saw Laura Herrington in there, if you saw her in there?

A. It must have been the 14th.

Q. All right. Now, I am talking about the night that you saw Laura Herrington in there. What did he say to you when he came in there that night?
[227]

A. From him, I think the first word he said was: "Well, you are reading again and two big lights on." "Yes," I says, "if it is about 8 o'clock the light in the front room can just as well be turned out," and he went forward and turned it out.

Q. All right. Now, after he turned the light out, then what did he do?

A. He came back into where I was.

Q. Did he sit down?

A. Yes. He stood around, walked around a little bit.

(Testimony of J. P. Rose.)

Q. What were you doing at the time?

A. I was laying on the bunk.

Q. Had you been reading? A. Yes.

Q. All right. Now, after he turned the light out, and he came back there, did he sit down?

A. He did, after stepping around a little bit.

Q. What was the first thing he said after he turned out the light, if you remember?

A. I don't remember. It is a kind of an offhand conversation.

Q. Well, now, just state what was said in there between you and him at that time, as you recollect it now.

A. Well, it is pretty hard to recommend—recollect just what did—was said. I wouldn't like to attempt to go over it.

Q. Give us you best recollection now of what was said there at that time?

A. Well, when he sat down he told me something about delivering a sack of potatoes down at Herrington's in the morning.

Q. Yes, sir?

A. And I asked him, I believe, whether George was there, and [228] he said he was, and the conversation drifted from what those girls was running from cabin to cabin and begging money.

Q. All right. Go ahead and state all he said.

A. I don't remember just anything that he said after that.

Q. You can't tell us now anything that he said.

A. I don't remember that he—just how he did

(Testimony of J. P. Rose.)

answer when I said that.

Q. Did he say anything about the show?

A. He says: "You are not going to the show to-night?" I says, "No. I go Mondays, Wednesdays and Saturdays, and sometimes Friday."

Q. Did he say anything about a key that was hanging on the wall?

A. Well, sir, I haven't the least recollection about any key, as I told the marshal's office when I was making that statement, but they insisted there was something said about a key, but if there was anything said about a key he was standing up at that time, and he was standing facing—well, he was standing right by the table, I think, and if there was any key mentioned, he was right in plain sight of a key that hangs by the looking-glass, and if there was anything said I think it was speaking—but my place is almost lined with keys, old keys, discarded old locks done away with. You can see them anywhere. You don't have to hunt much for keys.

Q. Mr. Rose. You made a sworn statement that same night, did you not, in the marshal's office, as to what took place up there that same night?

A. I did, as near as I can remember.

Q. This was immediatly after; the same night, wasn't it? [229]

A. Yes.

Q. I will ask you if that is your signature, Mr. Rose? (Hands paper to witness.) A. Yes.

Q. I will just call your attention to this part of this statement here (indicating).

(Testimony of J. P. Rose.)

Mr. MARQUAM.—I would like to examine that paper before these questions are asked about it.

Mr. ROTH.—I want to—(interrupted).

WITNESS.—If you would read that—(interrupted).

Mr. MARQUAM.—Just a minute. We object to any examination of this witness on this paper until we have an opportunity to examine it.

Mr. ROTH.—I will pass that question.

Mr. MARQUAM.—We ask the privilege of inspecting this paper at this time. It has been submitted to the witness.

Mr. ROTH.—I have not offered the paper yet.

Mr. MARQUAM.—It is not necessary that you offer it. We are entitled to inspect it.

Mr. ROTH.—We contend under the law that they are not entitled to it until we offer it; then they are entitled to it. I will pass that subject.

Mr. MARQUAM.—It has been submitted to this witness and identified by him.

The COURT.—(To Mr. ROTH.) Do you insist upon the witness answering the question?

Mr. ROTH.—No. I will pass the question for the present.

The COURT.—I didn't understand you.

Mr. MARQUAM.—I ask at this time that the Court direct the District Attorney to submit this paper to us for an [230] inspection.

The COURT.—Your request will be denied at the present time.

Mr. MARQUAM.—We save an exception.

(Testimony of J. P. Rose.)

The COURT.—Whenever there is a question propounded from the paper which he has in his hand and which he shows to the witness, well, then, very well—

Mr. MARQUAM.—He asked the question of the witness in regard to the signature on the paper.

Mr. ROTH.—Q. When you were lying on the couch there, did Wooldridge say anything about Laura Herrington?

Mr. MARQUAM.—We object to that, for it is perfectly apparent that Mr. Roth is asking some questions in regard to a paper purporting to be signed by this witness, and this paper has not been submitted to the witness except for the purpose of identification of his signature. This witness is entitled to read the paper and examine it as fully as he desires before any questions can be asked him concerning it. And we further object to the question because it is a question derived from this paper, and we should have the privilege of inspecting it before such question is asked.

The COURT.—And it is also very apparent that the objection which you present is more or less speculative. I do not know how you expect the Court to rule on assertions and appearances. Objection overruled.

Mr. MARQUAM.—It is apparent to anyone in the courtroom that Mr. Roth, in asking the question, is reading the paper.

(Objection overruled. Defendant excepts. Exception allowed.)

(Testimony of J. P. Rose.)

Mr. MARQUAM.—I will ask you if you are examining this witness now, Mr. Roth, from the contents of this paper?

Mr. ROTH.—I don't have to answer that question. [231]

Mr. MARQUAM.—Does the Court deny me the privilege of asking this question and of having Mr. Roth answer it?

The COURT.—Certainly.

(Defendant excepts. Exception allowed.)

(Question read: "When you were lying on the couch there, did Wooldridge say anything about Laura Herrington?")

A. I believe that while I was laying on the couch there that he told me about that sack of potatoes, and what the conversation drifted to I wouldn't be positive what it did go to.

Mr. ROTH.—That is not an answer to the question at all, if the Court please.

(The Court directs that the question be read again, and the question is read by the reporter to the witness.)

(Mr. Marquam objects to the question and the further answer, upon the grounds already stated, and leading and suggestion. Overruled. Exception asked and allowed.)

The COURT.—Answer the question, Mr. Rose.

A. Well, I don't remember that he did.

The COURT.—Ask your next question.

Mr. ROTH.—Was there anything said, while you were lying there on the bunk, between you and Mr.

(Testimony of J. P. Rose.)

Wooldridge at that time about the grand jury being in session?

(Mr. Marquam objects to the question, and desires to have the record show that Mr. Roth, when asking this question, is reading from this purported statement purporting to be signed by Mr. Rose, and which has been identified by Mr. Rose; that the witness has not had his right extended to him to examine this paper, and that an inspection of this paper has been refused counsel for the defendant.)

The COURT.—That is all on the assumption that he is reading from this paper?

Mr. MARQUAM.—Mr. Roth does not deny it.

The COURT.—Objection overruled. Answer the question (to the witness). (Marquam asks and is given an exception.)

A. The question was: Was there anything said about the grand [232] jury, was it?

Mr. ROTH.—Yes.

A. That came up just after talking about the sack of potatoes delivered, and they going from cabin to cabin and begging money, and I made the remark myself, independent, my own self now—I don't want Mr. Wooldridge to suffer on this—and I said, "I wouldn't have anything to do with them people while the grand jury was in session, because it would be thoroughly investigated. They would take her up in Mr. Roth's room and sweat her, and then to the assistants, and back down to the grand jury room, and they would get it out of her." I made that remark myself, independent.

(Testimony of J. P. Rose.)

Q. Didn't you, before the Grand Jury, under oath, while it was in session here testify while you were lying on the couch in your office, the evening that Laura Herrington came there, that—in substance as follows: Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to—or can you say—or gave you to understand that he wanted to have sexual intercourse with Laura, and you answered and said, “I would not have anything to do with her until after the grand jury got through; that the grand jury would get hold of a thing of that kind and would investigate it” and that you said, “It wouldn't be safe,” and you further said, “In order to get at that, they would take her up to Roth's office and then they would take her to one of the assistants, and then back down to the grand jury room again, and they would sweat her until she would have to tell it.” Did you so testify before the grand jury?

(Marquam objects to that as an attempt to impeach [233] their own witness; as a question apparently based upon a purported statement purporting to be signed by this witness, without the paper having been first submitted to the witness for his perusal; and also the attorneys for the defence have been denied the privilege of inspecting such paper. Objection overruled. Defendant asks and is granted an exception.)

A. Mr. Roth, after I told you in the grand jury, before that, about taking her and getting it out of her, didn't you ask me the question—(interrupted).

(Testimony of J. P. Rose.)

Mr. ROTH.—Now, if the Court pleases—

The COURT.—You answer the question that is now presented to you.

A. I was going to answer it now. I answered the question to the grand jury, didn't I, about taking her from one place to another?

The COURT.—I don't know.

Mr. ROTH.—He has not answered this question.

A. He asked me that question—

The COURT—Did you or did you not—well no. You may answer the question which has been asked you.

Mr. ROTH.—Please read the question again.

(Question read as follows. “Didn't you before the grand jury, under oath, while it was in session here testify that while you were lying on the couch in your office the evening that Laura Herrington came there, that—in substance as follows: Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to—or can you say—that he wanted to have sexual intercourse with Laura, and you answered and said, ‘I would not have anything to do with her until after the grand jury got through; that the grand jury would get hold of a thing of that kind and would investigate it,’ and that you said, ‘It wouldn't be safe,’ and that you further said, ‘In order to get at that, they would take her up to Roth's office and then they would take her to one of the assistants, and then back down to the grand jury room again, and they would sweat her until she

(Testimony of J. P. Rose.)

would have to tell it.' Did you so testify before the grand jury?")

Mr. MARQUAM.—There is a mistake in that question the way it was read, because Mr. Roth, during this question—this remark [234] was made, "cause you to understand."

Mr. ROTH.—Yes.

The COURT.—Q. Did you or did you not so testify?

A. There is part of that question which I did answer, but the sexual intercourse I did not. I said to the grand jury about taking her to the grand jury and back again, but Wooldridge never said to me that he intended to have intercourse or would have it.

Mr. ROTH.—You are sure of that?

Mr. MARQUAM.—I would like to have, if there is a mistake, and Mr. Roth says there was a mistake, I would like to have the correct question in the reporter's notes.

(Question read as originally put. See 2d page preceding this page.)

A. No. The sexual intercourse I didn't; but the grand jury, about that, that came up about going from cabin to cabin and a-begging money. That is how I came to say that.

Mr. ROTH.—Q. You say you told the grand jury under oath that the conversation between you and Wooldridge was to the effect that those girls were going around from cabin to cabin begging money?

A. To the best of my recollection.

Q. Did you also testify before the grand jury in

(Testimony of J. P. Rose.)

substance as follows: "He," referring to Mr. W. M. Wooldridge "saw a key on the wall and asked me if that was the key to the building, and I told him that that was the front door key?"

(Defendant objects to the question as not proper direct examination, an attempt to impeach their own witness; for the further reason that counsel in putting this question is reading apparently, in the presence of the Court and in view of the jury, and in view of counsel, and does not deny the fact that he is reading from this statement purported [235] to be signed by Mr. Rose at some previous time, without submitting this paper to Mr. Rose for his inspection further than to view the signature and identify the signature, and also that counsel have been refused by the Court the privilege of inspecting this paper before this witness is questioned concerning it. Objection is overruled. Mr. Marquam makes following request: We want at this time the record to show—to request the Court, if there is any doubt about it in the Court's mind as to whether Mr. Roth, the District Attorney, is examining this witness from this purported statement signed by him, to ascertain that fact by a question to Mr. Roth before permitting him to proceed further. The Court: There is no doubt in the Court's mind as to the law and procedure in this case. You (to witness) may answer the question.

WITNESS.—I forgot just how it was worded.

Q. (Question read)

A. If Mr. Wooldridge— (interrupted).

(Testimony of J. P. Rose.)

The COURT.—The question is: Did you or did you not so testify?

A. I testified something about a key.

Mr ROTH.—Q. Did you or did not you testify before the grand jury as stated in this question?

A. I think that I said if there was anything said about a key, it was that I told him it was a key to the front door, and if he asked me any questions; and I told them that I had a very faint recollection, none at all about any key being spoken of; and I told them the same in the office down below.

Q. Was there anything said by Mr. Wooldridge at that time—the time that you had this talk in your office the same evening that Laura Herrington came there about the time about the clock?

(Defendant objects as leading, suggestive, no basis for impeachment; that counsel for the government in *ansing* the question is reading from the statement purported to be signed by the witness, which paper was submitted to him for indentification of his signature, and counsel for the defense have been refused inspection of said paper. Objection overruled. Defendant excepts. Exception allowed.)

A. He asked me if the clock was right.

Q. What did you say? A. Seven minutes fast.

[236]

Q. You stated that this was your signature to this paper. Now did you swear to it? A. Yes.

Q. Before whom?

(Objection by defendant. Discussion. Paper

(Testimony of J. P. Rose.)

handed to witness for inspection.)

A. Yes. That is my signature.

Q. Did you swear to that?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. I swore to the best of my knowledge to this paper. When I came to that I says, "To the best of my knowledge." That is the way I swore.

Q. How long was it after the conversation that you had with Wooldridge that you signed that paper?

(Witness after inspecting paper, hands same to Mr. Marquam.)

Q. How long was it after you had this talk with Wooldridge that evening at your place before you signed this document that has just been shown to you?

A. I guess—the talk was along about eight o'clock, and in that document must have been signed along near ten o'clock.

Q. The same evening? A. Yes.

(Noon recess untill 2 P. M. Jury, after being admonished, in charge of bailiffs. After recess, at 2 P. M. jury, defendant and his attorney's and District Attorney present and trial proceeds.)

Mr. ROTH.—We desire to offer this written instrument in evidence, and identified by the witness as having been signed by him.

(Paper marked as Plaintiff's Identification 1.)

We offer Plaintiff's Identification 1 in evidence.

(Testimony of J. P. Rose.)

(Objected to by defendant; that questions we asked the witness concerning the paper without it having first been submitted to him for inspection; incompetent, irrelevant and immaterial. No proper foundation laid to impeach. Overruled. Exception allowed. Mr. Roth reads same.) [237]

Plaintiff's Exhibit No. 1—Statement of J. P. Rose.

“Wooldridge came in, said, ‘Do you read all the time?’ Then he got up and said, ‘I think you are burning a good deal of light.’ I remarked, ‘It is eight o’clock,’ and he went out and shut the lights off in the front room. He asked me if I was going to the show, and I said, ‘no.’ He saw key on the wall and asked me if that was the key to the building and I told him that that was the front door key. When Laura Herrington came in she and Wooldridge talked by the heater. Wooldridge was standing between me and her and they said a few words which I did not understand. He got up and went out, and then I went out for I did not want to be left alone with her. Then he, Wooldridge, went back and talked to her in the back room for a few seconds, and when he came back out, she turned out the light. Wooldridge asked me about Laura while I was lying in the bed and said he wanted to screw her, or words that gave me to understand that he wanted to have sexual intercourse with her. I answered; ‘I would not have anything to do with her until after the grand jury get through;’ I said; ‘The grand jury would get hold of a thing of that kind and would investigate it.’ I said, ‘It wouldn’t

(Testimony of J. P. Rose.)

be safe.' I said, 'In order to get at that, they would take her up to Roth's office, and then they would take her to one of the assistants, and then back down to the grand jury room again, and they would sweat her until she would have to tell it.' He asked me if that clock wasn't fast, and I said, 'About seven minutes.' When I went back into the house, I told her to come on out; that somebody was watching her. I recognized who they were, and told him so then. I turned and went back in and got the girl.

(Signed) J. P. ROSE. [238]

Subscribed and sworn to before me as J. P. Rose's voluntary statement by J. P. Rose himself.

[Notarial Seal] FRANK B. HALL,
Notary Public in and for the Territory of Alaska.

My Commission expires October 25, 1919."

Upon the second part or page, the initials "G. B." appear and underneath it "F. B. Hall, John C. Wood" and "P. McMullen." On the first page, the identification "P. McMullen, John C. Wood, F. B. Hall" and the initials "G. B." and the seal—notarial seal also attached to the first page.

Mr. ROTH.—You may cross-examine.

Cross-examination

(By Mr. MARQUAM.)

Q. Mr. Rose. Did you write this statement?
(Pltff's Exhibit 1.) A. No, sir.

Q. You signed it did you? A. I did.

Q. Did you say that was your signature?

A. Yes, sir.

(Testimony of J. P. Rose.)

Q. Where were you when you did that?

A. In the marshal's office.

Q. Did you ever read that? A. No.

Q. Who wrote it? A. Miller.

Q. What were you doing down at the marshal's office then?

A. They sent down for me to come up; they wanted to talk to me.

Q. When was that? [239]

A. The same night that Laura Herrington was there, the 14th of February.

Q. Was Laura Herrington there at that time?

A. No.

Q. What time of day or night was it?

A. It was after they had come down and took Laura and Wooldridge and myself up here, and I went back again—I went back home, and they came down after awhile and I came up.

Q. Well, did you make the statements or all the statements contained in this paper?

A. Well, they don't read just exactly as I meant them for, anyway.

Q. You didn't write it? A. No.

Q. Did you dictate it?

A. Miller just asked me questions along.

Q. And then when he would ask you the questions, what would you do?

A. I would answer him just the best I could remember.

Q. There are no questions written down here. You have heard this read. A. Yes, I did.

(Testimony of J. P. Rose.)

Q. No questions written down here. He just wrote the answers that you gave. Are they the ones that are written down here? A. How is that?

Q. Are the answers that you gave to those questions he might have asked you written down here; are these the answers?

A. I see one place there that I didn't know that was on that paper. I don't think that I ever said that Wooldridge wanted to have sexual intercourse with Laura Herrington. [240]

Q. No matter what you said at that time and under those circumstances, what is the fact and what is the truth. Did he ever tell you that?

A. Never in his life.

Q. Never in his life?

A. Never in his life as I remember.

Q. Were there any threats made to you at the time you were down to the marshal's office, by any of the marshals?

A. Berg. He says; "You are lying" "You are lying." And that was on that key question.

Q. Just describe to the jury his attitude and what he did when he said that to you.

A. Well I — (interrupted.)

Q. As to whether or not it was threatening or otherwise.

A. It looked to me like it was a kind of a bluff.

Q. A kind of a bluff? A. Yes.

Q. How many people where there at the time?

A. There was no one there but deputy Marshals

(Testimony of J. P. Rose.)

Miller, and Pete McMullen, and Berg, and Frank Hall I believe.

Q. Did they bring you down themselves from your place?

A. Pete McMullen came down and told me that Joe would like to talk to me if I would come up.

Q. Did you go up with him?

A. I did. He was going to go, and I said, "Wait, and I will go up with you," and he says, "You don't have to go with me." I says, "It is all right. I will go up with you."

Q. I understand you to say, notwithstanding what it was that Miller wrote down here and that you signed without reading it, that Wooldridge never made such a statement to you. [241]

A. No.

Q. In his life? A. Wooldridge never did.

Q. You were sworn to this? A. Yes, sir.

Q. By Hall? A. By Frank Hall.

Q. Well, what did Wooldridge say to you when he first came into this place, Mr. Rose?

A. He said, "You are reading again," I believe, and then I told him I was getting so that I would read every time I stopped, or some such a thing as that.

Q. Were you expecting Wooldridge particularly upon that occasion?

A. If they had come to me and told me that Wooldridge wouldn't have been there, I would have to tell them that he would.

Q. State what Wooldridge's habits have been in

(Testimony of J. P. Rose.)

regard to dropping into your place; on what occasions; for what purpose?

A. Wooldridge is a man that never passed my door unless he dropped in. He always calls in in the evening, I would say five nights out of seven, and comes back into the back part of the room and sits down a few minutes, and then he will get up and go about his business.

Q. Did he at any time that he has been in your place—you said generally that he had never made any such statement to you that he wanted to have sexual intercourse with this girl—did he at any time in your place ever talk to you or ever say to you that he wanted to, or had had sexual intercourse with this girl? [242] A. No.

Q. How does this statement get in this paper?

A. That is what I don't understand. I made the remark at the time that he never said to me that he wanted to have sexual intercourse with her at all.

Q. Just go ahead and tell this jury, notwithstanding what Miller wrote in this paper, just exactly what occurred there at the time that Wooldridge came in this evening; what time it was, what he said, what you said, and what was done?

A. When he first came in he says—this will be as near as I can remember.

Q. Before you start in, let me ask you if this is not so: Didn't Wooldridge, as he came through the front part of the shop to where you were, and as he was coming through say: "You are pretty extravagant. Burning—" (interrupted).

(Testimony of J. P. Rose.)

A. That was just about the time he came through the opening there. He says, "You are very extravagant," I think, "Two big lights a going."

Q. Then you suggested that it might be turned out, and he turned it out?

A. I suggested about eight o'clock—(interrupted).

The COURT.—Answer the third question before.

Mr. MARQUAM.—What is that?

The COURT.—Before you answered it, you were asked two more questions. Answer the question which was propounded to you. Read the question.

(Question read as follows: "Just go ahead and tell this jury, notwithstanding what Miller wrote in this paper, just exactly what occurred there at the time that Wooldridge came in this evening; what time it was, what he said, what you said, and what was done.")

A. As he came in the opening, he says, "Well, you are reading [243] again," and he says, "I think you are pretty extravagant, two big lights a-going." I says, "Yes. The front light might as well be turned out. It is about eight o'clock." He just turned right around and he says, "I'll turn it out."

Q. All right. Go ahead.

A. And he came back in, and he says, "Is that clock right?" I said, "No. It is about seven minutes fast," and he—

Q. During this time what were you doing?

A. I was laying on the bunk.

Q. Lying on the bed?

(Testimony of J. P. Rose.)

A. And he walked on ahead, passed the bunk like, where I couldn't see him, and we talked a half a minute. I don't know just exactly what the conversation was, and he got his chair then and sat down alongside of the bed.

Q. How long did he stay there?

A. Oh, until Laura Herrington came in.

Q. About how long was that?

A. Oh, it wouldn't be ten minutes I wouldn't think. It was a very short time.

Q. In the neighborhood of that time? A. Yes.

Q. In the neighborhood of ten minutes?

A. Yes.

Q. What were you talking about?

A. I think we were talking about him delivering a sack of potatoes.

Q. Did he tell you the occurrences and incidents that had happened down at Herrington's house the night before? [244]

A. Not any more than delivering them a sack of potatoes that morning.

Q. Did he tell you about any of the circumstances that happened during that day or in the evening down there at the house? A. The night before?

Q. That happened the night before?

A. Yes. The night before.

Q. Did he tell you what happened down there the night before?

A. Yes. He told me he stepped in and asked Laura where George was, and she said he was up town—or upstairs, I mean. I take that back.

(Testimony of J. P. Rose.)

Q. Upstairs? A. Yes. Upstairs.

Q. Did he go on and tell you then of her telling somebody else— A. Yes.

Q. —that he was not upstairs, but was down town? A. Yes.

Q. Was that all discussed—what happened up there, was that discussed between you and Wooldridge at that time in your shop?

A. Just to a very small—we were just on that now when Laura came in.

Q. You stated in your direct examination, Mr. Rose, that you said to Wooldridge something about your—you would not have anything to do with these girls while the grand jury was in session, or something to that effect? You remember that testimony? A. Yes.

Q. Just what was that?

A. Well, we were talking about the girls running so wild from cabin to cabin a-begging money. [245]

Q. How did you happen—how did that conversation happen to turn on that point?

A. It just happened to come out of him being down there and two marshals walking in while he was sitting there.

Q. Down at his house? A. Down at his house.

Q. Was this fact of the girls going from cabin to cabin around town here and soliciting money—was that known to you from general knowledge, hearsay?

(Objected to by plaintiff's attorney. Overruled.)

Q. Was that known to you by hearsay, from gen-

(Testimony of J. P. Rose.)

eral reputation at least? A. From experience.

Q. From experience?

A. From experience. Yes, sir.

Q. And in any way did you know it also by hearsay and reputation?

A. Of course, I knowed a great deal of it by experience and by hearsay.

Q. By hearsay? A. Yes. Certainly.

Q. That was the subject of conversation, then, between you and Wooldridge?

A. There had just been a word or two said, something of that kind.

Q. What was it that had been said during the time that you and Wooldridge were in there that led up to you making this remark about the grand jury?

A. How they was a-going to cabins and soliciting money.

Q. Let me ask you this: Was there a word said by Mr. Wooldridge from the time he came in there until he went out that caused [246] you to make that remark or direct it to him, that is, apply it to him, I mean?

A. No. I think I was telling him. I think I was telling him.

Q. What?

A. About this, after he told me he had been down there, and was down there the night before and she had told him that her father was upstairs.

Q. What I mean to say, Mr. Rose, was there any thing said by Mr. Wooldridge about his intending to, or wanting to, or trying to have anything to do

(Testimony of J. P. Rose.)

with this girl Laura Herrington that led you to make that remark? A. No. No. No.

Q. Nothing?

A. No. Not in my recollection at all.

Q. Are you willing to say positively to this jury now that there was nothing said by Mr. Wooldridge that caused you to make that remark, as applying it to him?

A. I don't think that Wooldridge made any such remarks or banters to me whatever, to the best of my knowledge, that he wanted to do anything in my place at all.

Q. You are satisfied of that? A. I am.

Q. After you had been sitting there—or he had been sitting there and talking with you for a period of about ten minutes, or in that neighborhood, I understood you to say that Laura Herrington came in?

A. Yes, sir.

Q. All right. Just tell this jury now, when she came in what was done and what was said.

A. I says to Mr. Wooldridge, "Who is that coming through the door"? [247]

Q. You were still lying on the bed, were you?

A. I was still laying on the bed.

Q. Where was he standing or sitting?

A. He was sitting there. He couldn't see from where he was sitting at all, and he kind of turned over this way (showing) and then he got up and stepped to the opening and she came right up to him and he addressed her and she addressed him and just as they came together, I says, "Is it

(Testimony of J. P. Rose.)

Laura," just at the moment that they were speaking.

Q. What did they say?

A. I didn't catch what they said, by my speaking myself I think is the reason.

Q. Was it a conversation or just a remark?

A. Just a remark, and only a word from each, or such a matter.

Q. Go ahead and tell the jury just what else happened.

A. Well, Wooldridge tied his cap in under his chin and started to walk out, and I jumped right up off of the bunk and stepped right out of the room, and he says to me when I came up to where he was, he says, "She says somebody is following her." "Well," I says, "I will put on my coat and we will turn the light out and we will see who it is." And he stepped back—he didn't go out of my sight at all, and he says to her, "Mr. Rose said to turn the light out," and he turned right around and came out. He wasn't out of my sight at all. And I think, if I remember right, that I went back into the place where she was and got my hat and walked right out, and Wooldridge walked out ahead of me, out of the shop ahead of me, and I just stepped outside of the door where I could see up—I didn't step on the sidewalk even. [248] I didn't pull the door to—and I see Frank Hall and another marshal on the corner there at McPhee's, and I turned right around and as I entered the door I says, "You come out of there," and turned the light on again, and

(Testimony of J. P. Rose.)

walked right back and told her to come on out.

Q. Directed your remark to who?

A. Laura Herrington.

Q. Laura Herrington?

A. And I went right back and went in the room where she was. There is an opening about six feet or seven, no curtain or anything over it, and I says, "You come out of there." And she says, "When will I come back"? I says, "You can come back and see me any time." And she came out to the front.

Q. Well, what happened at that time?

A. Why, Wooldridge and Frank Hall came in.

Q. What did they say, if anything?

A. They didn't say anything until Miller came in. Miller he came in and he says, "What are you two men doing in this house with this young girl, and the lights turned out?" And he addressed Wooldridge. He didn't address me. Wooldridge said, "She said somebody was following her, and we were going to see who it was." And how far Wooldridge went from the door, I couldn't say.

Q. What did you do?

A. I turned back and went in and brought her out to the front and when the marshals came in I had a hundred-power lamp there and just turned it on—the big lamp.

Q. Was that the one that was burning first?

A. No. [249]

Q. Well, did they say anything to you, or did you say anything to them?

(Testimony of J. P. Rose.)

A. Miller asked her what we were a-doing there—asked Mr. Wooldridge what we were a-doing there in that house with that young girl and the lights turned out, and Wooldridge he told him that she said there was somebody following her, and we were going to see who it was.

Q. Let me ask you if this circumstance occurred: Did Wooldridge at any time that he was there ask you to go out of the house, get away from there?

A. No, sir.

Q. Let me ask you if this occurred: Did you—did Wooldridge at any time prior to the time that the marshals arrived there say—start to go to the front door and say, “Well, I am going out,” and you said to him, “Aren’t you going to take the girl with you?” and he replied, “No. I am going to leave her for you.” Did any such conversation as that occur?

A. By no means.

Q. No such conversation as that occurred.

A. No. That is the first time I ever heard that.

Q. I understand you to say, Mr. Rose, that you have given now in substance or practically what occurred in the shop all the time that you were in there when Wooldridge or the girl were there, that is, practically. A. Yes.

Q. You have covered it, except perhaps in some details?

A. Something that might have slipped my memory.

Q. Was there anything said there, Mr. Rose,

(Testimony of J. P. Rose.)

about any keys, that you remember distinctly?
[250]

A. Well, that key business, I remember, I got from Berg, the marshal.

Q. How did you get it from Berg, the marshal?

A. Berg he insisted that there was a key spoken of. I haven't the least remembrance of it at all, and I will say that Wooldridge didn't ask me for any key.

Q. He didn't ask you for any key.

A. He did not ask me for any key, for as I—
(interrupted).

Q. Your answer to Mr. Roth this morning was simply—you were simply guessing that if anything was said of such a thing you have not the slightest recollection of it?

A. That is the way I aim to put it as I put it now, and Berg was the man that insisted that there was some key spoken about, and told me he was in the hallway there at the same time, and I told him that that key business was a blank in my mind altogether, but I says, "If there was a key spoken about, it must be that key up there."

Q. That was just a guess upon your part—

A. That was simply a guess.

Q. —if anything was said. As I understand you, you have no recollection—

A. I have no recollection of the key, only by Berg speaking himself, and I told them so.

Q. That is what you told the marshal, told Berg?

A. I told them in the grand jury room the same way; I had no recollection of a key being spoken

(Testimony of J. P. Rose.)

about, only they insisted that they had heard a key mentioned. But there are so many keys around there that you couldn't tell what a man would be asking unless you could see him.

Q. And you are satisfied and positive upon this part; that Mr. [251] Wooldridge never asked you for any key to your place?

A. He never asked me for no key at that time or no other time.

Q. He asked you something about whether you were going to the picture show, you said.

A. Yes. He asked me if I was going to the picture show.

Q. Was that just a casual question?

A. Oh, it certainly was.

Q. Are you in the habit of going to picture shows considerably?

A. Yes, I go three times and maybe four times a week.

Q. Now, when you went down to the marshal's office, did one of the marshals say to you in substance, and they insisted, that there was some talk about a key and Wooldridge was to get a key, "Now, if that key"—when you told them that you had a key of your house which belonged to your door, that you said, "If that key is not there now, Wooldridge has got it." Did you say something of that sort?

A. When they were talking about the key, they asked me if the key is there. I says, "Now, you have got me." That is just the words I said, and I said, "I will tell you. I will go down to my shop, and if

(Testimony of J. P. Rose.)

that key is not there, Wooldridge has got it," because it was there and a place for it. They said he had been there. Wooldridge had not been in that part of the shop since.

Q. What did you do when you were down there?

A. I walked in and turned the light on, and there was some loose tools over on the bench, and I commenced to hang them up, and in came the marshal, and he walked back—

Q. Was the key there?

A. The key was hanging right in its place. [252]

Q. Right where you always keep it?

A. It is hanging there to-day.

Q. Is that where you always keep it?

A. Where I always keep it. And the reason I keep it there; that if I would happen to drop my bunch of keys, I can go down cellar in the saloon and come up into my place from the cellar and get my key and let myself out.

Q. Has Wooldridge ever had that key? A. No.

Q. —In his possession?

A. No man has ever had it. Yes, I will take that back. Tom Blalock had it to watch my woodpile. I said no man, but Tom Blalock had it.

Q. When was that?

A. When he was the night patrolman.

Q. When he was on the police force?

A. Yes. They were stealing my wood, and I gave it to Tom.

Q. I don't care about that, Mr. Rose. Well, after you had told him that you were not going to the pic-

(Testimony of J. P. Rose.)

ture show that night, did he suggest that you go out, go to the picture show. A. No.

Q. Did he suggest that you go and take a walk, or anything of that kind? A. No.

Q. Did he say anything about intending to meet the Herrington girl, or anybody else, in your place?

A. He had not said a word to me about the Herrington girl coming there at all.

Q. Not a word? [253]

A. Not a word in any way that—(interrupted).

Q. Was there anything happened there, Mr. Rose, that night which was out of the ordinary of the happenings that occurred there when he had dropped in on other occasions? A. Oh, no. Nothing.

Q. I understood you to say that when they were questioning you in the marshal's office about what occurred there, that Berg, at least upon one occasion, said, "You are lying." A. Yes.

Q. Well, I want you to tell this jury whether it was done in a calm way or in a threatening way?

A. Well, it looked to me like it was a kind of a threatening attitude.

Q. Who was asking you questions? A. Miller.

Q. Miller alone? A. Miller alone.

Q. What did Berg have to do with it, then?

A. He would interrupt me.

Q. He would interrupt you? A. Yes.

Q. Did he interrupt you more than once?

A. About twice, I think.

Q. Told you you were lying twice? A. Yes.

Q. And insisted—did he say he had heard you or

(Testimony of J. P. Rose.)

Wooldridge talking about a key?

A. He insisted that I—that there was something said about a key.

Q. Did he tell you what it was? [254]

A. No.

Q. He told you you were lying, though, when you told him you had no remembrance of it.

A. And when this thing—when Miller had got through writing, he said to Berg, “Do you want to ask him a question?” and he said, “No,” he said, “That is about so.”

Q. You say that this all occurred on the 15th?

A. On the night of the 14th.

Q. On the night of the 14th?

A. I think it was on the 14th.

Q. That you—or the 13th or some day, whatever it was, you didn’t make it clear, that Wooldridge asked you to buy him a bottle of whiskey.

A. That was on Monday.

Q. What date would that be?

A. That was the 13th, I think. It was the night before he delivered the sack of potatoes. You can get it positively that way.

Q. It was the night before he delivered the sack of potatoes.

A. I think he delivered the sack of potatoes on the 14th.

Q. Whatever the date was upon which that delivery was made, you are satisfied it was the night before? A. Yes.

Q. What makes you think so?

(Testimony of J. P. Rose.)

A. Well, I heard the next morning—I ain't sure but what old man Cameron told me something about it—that the old lady Herrington—or it might have been some of the Morencys, because I wouldn't be positive which of them—that Mrs. Herrington was on a drunk.

Q. Was that an uncommon thing to hear? [255]

Mr. ROTH.—We object.

A. No, no.

Mr. MARQUAM.—Q. It didn't strike you as anything peculiar, the fact that she had been drinking, and drunk?

A. I asked Wooldridge when he came in if he gave old lady Herrington that whiskey he got last night.

Q. What did he say?

A. No. He said he had his whiskey yet.

Q. What kind of a bottle of whiskey was it that you purchased for Mr. Wooldridge?

A. A four-bit bottle.

Q. You mean a flask? A. Yes, a flask.

Q. What size flask would that be?

A. Half a pint it would be, or near that.

Q. Let me ask you if Deputy Marshal Berg—or, let me ask you before that: What kind of a flask was it, describe it to this jury.

A. Which? That I bought for Wooldridge?

Q. Yes, that you bought for Wooldridge.

A. Just a common half-pint bottle, whiskey bottle.

Q. What was the color of the bottle?

A. Well, I couldn't just exactly say with the whiskey in it. I never looked at it at all, but if it was

(Testimony of J. P. Rose.)

empty it might be a nice clear bottle.

Q. Let me ask you if, a day or two afterwards—I can't fix the day any closer than that—that George Berg, the deputy marshal, didn't come into your place with a flask in his hand which was brown in color—the bottle itself, not due to the whiskey that was in it—being empty—and ask you [256] if that was not the bottle that you bought for Wooldridge.

A. He came in. I was in the back room at the time.

(Objected to as irrelevant, incompetent and immaterial, and not cross-examination. Sustained. Defendant asks and is given an exception.)

Q. What marshal was it, Mr. Rose, that went down with you to see whether or not the key to the front door was hanging in its proper place?

A. I think John Woods and Pete McMullen.

Q. You think John Woods and Pete McMullen.

A. I know John Woods was, because he had a revolver there at the time getting repaired.

Q. When was that with reference to the time that you were down in the marshal's office?

A. That was just when I left the marshal's office.

Q. When you left the marshal's office they went right up with you.

A. That is another matter. I told them we would go down together, but they said they would be down there right away.

Mr. MARQUAM.—That is all.

Mr. ROTH.—Nothing further. [257]

Testimony of George Berg, for Plaintiff.

GEORGE BERG, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. George Berg.

Q. What official position, if any, do you hold?

A. Deputy United States marshal.

Q. Are you acquainted with J. P. Rose?

A. Yes, sir.

Q. Are you acquainted with Laura Herrington?

A. Yes, sir.

Q. Did you go to the place of business of J. P. Rose during the month of February for the purpose of hearing what might transpire? A. Yes, sir.

Q. What date was that?

A. On the fifteenth of February.

Q. Where did you go, Mr. Berg?

A. Well, I went in through the grocery store here on Second Avenue.

Q. McDermott's?

A. McDermott's. Into the hallway right back of McDermott's store.

Q. Just describe that place there.

A. There is a hallway the full length of the building, or the width of the building, probably four feet or five feet wide, and it is boarded up with inch boards, twelve-inch boards, a foot wide, and the boards are in places dried out and [258] shrunken so they are an inch or an inch and a half apart, and it is lined on the inside with paper and lining.

Q. Did you make any opening so you could see

(Testimony of George Berg.)

into Rose's apartments? A. I did.

Q. What kind of an opening did you make?

A. I cut the lining with a knife.

Q. Could you see in? A. Yes, sir.

Q. Was anyone with you there? A. Yes, sir.

Q. Who? A. John Wood.

Q. Where was he stationed with reference to yourself?

A. He was at my right, probably six feet from me.

Q. Was he in as good a position to hear as you?

A. Well, not exactly, no. He was farther away.

Q. Was he in a position where he could see anything in the room?

A. No. He couldn't see because he had no knife. He could hear things, but he couldn't see, because he had no knife to make an opening.

Mr. MARQUAM.—Q. Just a moment. Just tell what you know yourself. You don't know whether he could hear or did hear. You're just guessing at that. A. He told me so.

Q. You shouldn't be telling what somebody told you. A. All right.

Mr. ROTH.—Q. At any rate, what time did you get there and make that opening so you could look in? [259]

A. It was about seven-fifteen or seven-twenty, somewhere along in there.

Q. Did you see Mr. Wooldridge come into Mr. Rose's apartments? A. I did.

Q. What time did he come in?

A. It was before eight o'clock. I couldn't say ex-

(Testimony of George Berg.)

actly. Some time after I had been there, probably fifteen or twenty minutes.

Q. Could you see Mr. Rose when you looked through that opening? A. Yes, sir.

Q. Where was he? A. He was lying on the bed.

Q. Where you could see him?

A. Just practically across from me.

Q. How far from you?

A. I judge about six or seven feet, probably eight feet. I couldn't say exactly.

Q. What did Wooldridge do when he came in?

A. What did he do?

Q. Yes. What did he say the first thing?

A. The first thing he said, "You have too much light here, Rose."

Q. What did Rose say?

A. He said something to him about turning it out, and he turned right around and went right out in front and turned the front light out.

Q. You saw the light go out, did you?

A. Yes, sir.

Q. Then what did Wooldridge do after he turned out that light?

A. He came back and commenced to talk to Rose.

[260]

Q. Did he stand up or sit down?

A. He stood up at first.

Q. Now, you go ahead and tell this jury everything that you saw and heard in there from that time on.

A. Yes. Well, the first thing that Wooldridge said when he came in, he said, "You have got too much

(Testimony of George Berg.)

light in this place," and he turned right around and went out and turned the light out, that is, out in front in the workshop. Then he came back and started in a conversation with Rose in reference to the picture show, talked about the picture show, and Rose told him that he had been to the picture show last Friday, I think. And they talked on in that way for several minutes, and finally they commenced to talk in a low tone, and I couldn't hear all the conversation.

Q. Just tell what you did hear.

A. I heard them make a reference to a key, something about a key.

Q. Yes?

A. Then they brought up—(interrupted).

Q. What did you hear them say about the key?

A. I heard them speak of a key, and Rose said that that was a key to the front door.

Q. Go ahead.

A. And so they started on to talk and brought up Laura Herrington's name.

Q. Who brought up her name? A. Wooldridge.

Q. All right. Now, go ahead and state what he said. [261]

A. Then they commenced to talk in whispers, in a lower tone, and I couldn't hear all that was said, but now and then I could get a little of what was said in substance.

(Defendant objects to the witness telling his own version from what he did hear when it is perfectly apparent that he did not hear the conversation.)

The COURT.—You tell the jury as nearly as you

(Testimony of George Berg.)

can what you heard. A. Yes, sir.

Mr. ROTH.—Yes.

A. They talked about Laura Herrington and in substance it was in reference to Wooldridge wanted to screw Laura Herrington. That was all there was to it.

(Defendant moves to strike the answer.)

The COURT.—That portion of the answer may be stricken. You may tell the jury as nearly as you can the words you heard used, the conversation between these two men.

Mr. ROTH.—Yes.

A. I didn't hear all their conversation, you see.

Mr. ROTH.—Well what did you hear?

A. That he wanted to do business with Laura Herrington.

Q. What did Wooldridge say?

(Defendant moves that the answer be stricken for the reason that it does not purport to be the conversation or statements, but merely his conclusion that he arrives at from what was said. Motion denied. Defendant excepts. Exception allowed.)

Q. What did Wooldridge say to that?

A. Well, he said in substance that he wanted to do business with Laura Herrington, and they talked on in a low tone. I couldn't hear everything that was said. And finally Rose spoke up and he said, "I wouldn't"—he said something [262] about the grand jury being in session, and that, "I would wait because the grand jury is in session and you are liable to get into trouble," or words to that effect, I

(Testimony of George Berg.)

don't remember exactly. And they talked on that way for sometime in a low tone.

Q. Do you remember anything further that was said as to what would happen, what they would do with Laura?

A. Well he said, "If the grand jury get hold of her" that they were liable to question her, and they would get something on him, or something to that effect, I don't remember exactly.

Q. Go ahead.

A. And they talked on that way in a low tone, and I couldn't get all the conversation. Finally, while they were whispering and talking there, Laura Her-
rington came in.

Q. All right. Did you see her?

A. Yes, sir. I saw her when she passed between Mr. Rose and me, and went to the back of the room.

Q. All right.

A. And one of the two of them said something. I don't know what was said, I don't remember now. And Mr. Rose spoke up and said, "Well Laura can come here and see me any time she wants to." Those are the very words he said. And they talked to her and jollied her up a little.

Q. Go ahead now and tell—(interrupted).

A. And directly Rose and Wooldridge went out, went out into the front room. I couldn't see them, but I know they went out, and they talked there awhile but I couldn't hear what they said there, and they came on back and were probably in there a few

(Testimony of George Berg.)

minutes in there, and went outside and left [263] the girl there.

Q. Who came back?

A. Why Wooldridge, Wooldridge and Rose.

Q. Did you notice anything with reference to the light in the back room?

A. The light was on until after they came back and then the light was put out.

Q. Did you hear anything said about the putting out of the light?

A. I can't recall now whether there was something said, but I know the light was put out.

Q. When that light was put out was the whole place in darkness?

A. Yes, sir. That was the light in the back room.

Q. The light in the back room and the front room too? A. Yes, sir. It was all in darkness.

Q. Well did you hear anything further after the lights were out and it was dark in there?

A. After they went out, you see, I knew that Laura Herrington was still in there because I could hear her, you see, and someone came in after the lights were out. And they were out a short time and called her out.

Q. Did you hear what he said to her?

A. No. He said, "Come on Laura" or something like that, called her out and they went on out.

Q. Now after that, what did you do?

A. I stayed there a little while and directly I was called out by Mr. Miller.

Q. And where did you go?

(Testimony of George Berg.)

A. I went down to the office here. [264]

Q. I will show you a document that is marked Plaintiff's Exhibit One, and ask you to state whether or not you recognize any of the initials at the bottom of the two pages there. A. Yes, sir.

Q. There is an initial "G. B." there. Who's initials are those? A. That is mine.

Q. Did you write that? A. Yes, sir.

Q. On both pages? A. Yes, sir.

Q. Were you present when this document was written up? A. I was.

Q. Who wrote it? A. Mr. Miller.

Q. Chief Deputy Marshal? A. Yes, sir.

Q. Just state how that was written at the time it was written.

A. Well it was written in sections, that is, a little at a time as he made the statement.

Q. As who made the statement?

A. Mr. Rose. As he made the statement, it was taken down and read, then he was asked if that was correct and he said, "Yes"; if that was what he had to say and he said, "Yes." Then he would go on with the whole tale and there would be some of it written and he was asked if that was what he wanted to say, and he said that was it. And after it was finally completed it was handed to him and asked him to read it and he said he hadn't his glasses with him and he couldn't read it. So [265] Mr. Miller handed it to Frank Hall and had Frank read it to him, and asked him if that was what he wanted to say, and he said yes, that that was true.

(Testimony of George Berg.)

Q. Did he sign it? A. He did.

Q. Did he swear to it? A. Yes, sir.

Q. Before whom?

A. Before Frank Hall as a notary.

Q. Now during the time that he was making his statements and they were taken down in sections as you have stated— A. Yes, sir.

Q. —Did you at any time interrupt and make a remark or suggest to Mr. Rose?

A. I did. I interrupted him frequently.

Q. All right. Just state what interruptions you made.

A. Well, when he claimed he couldn't remember or claimed he didn't know just what they did say, and he was lying, or I knew from what I heard he was trying to lie out of it—

(Mr. MARQUAM.—I object to that kind of testimony that “he was trying to lie out of it.”)

Q. State what he said and what you said.

A. I called his attention the the conversation that he and Wooldridge had about Laura Herrington.

Q. Yes?

A. And I told him to tell the truth, just exactly. I told him to tell Mr. Miller exactly what he and Wooldridge were talking about.

Q. Did you call his attention to any particular subject? [266]

A. Yes. To that particular thing.

Q. What particular thing did you call his attention to?

A. To the conversation about Laura Herrington,

(Testimony of George Berg.)

and also to the conversation about the grand jury being in session; and then he claimed that he remembered, and went on and stated just what was said.

Q. Did you tell him at that time anything at all that you had heard? A. Tell Rose?

Q. Yes.

A. Yes. I told him that I heard him mention the grand jury.

Q. Did you tell him what it was that he had said about the grand jury?

A. No. I did not. I told him to tell the truth about what he had said about the grand jury being in session; that that was what I wanted him to say; and he did, he told Mr. Miller, and Mr. Miller took it down.

Q. Did he tell it right after he started to tell it?

A. Yes. He said that was the truth.

Q. How about the key?

Mr. MARQUAM.—“Did he tell it right.” What do you mean by “right”; by what this witness heard?

Mr. ROTH.—That is what I mean.

Q. From what you had heard in there did you know that the statement he made there at that time was a correct statement?

A. From what I heard of it, yes, sir.

Q. Did you make any suggestion to him about the key when he was making this statement? [267]

A. I did. I told him to tell what was said about the key, what conversation was had about the key. He said he knew there was a conversation about a

(Testimony of George Berg.)

key but he didn't know what it was that they talked about keys. I told him all we wanted was for him to tell the truth of the conversation that they had about the key.

Q. Now, the night before that, Mr. Berg, had you been down to Herrington's house? A. Yes, sir.

Q. What time did you go down there?

A. About seven o'clock or seven ten, somewheres right along in there, somewheres in the neighborhood of seven o'clock.

Q. What was your purpose of going down there?

A. I went down there to install a Haliday detector.

Q. What other purpose did you have? Did you go back again after that was installed?

A. Yes, sir.

Q. What was your purpose in going there at that time?

A. Well I went back there to hear what was said.

Q. Between whom?

A. Between Wooldridge and Laura Herrington.

Q. Where were you stationed?

A. I was in the room adjoining the front room, on the stairway where I could see the door, that is, the door between the two rooms.

Q. You were not upstairs?

A. No, sir. In fact I had everything ready and the machine installed.

Q. Did you see Mr. Wooldridge that night?
[268] A. I did.

Q. I mean at that time. A. No, sir.

Q. Did you hear anything while you were in

(Testimony of George Berg.)

there, from the outside? A. I did.

Q. What did you hear?

A. I heard two or three whistle signals.

(Defendant objects to the question and asks that the answer be stricken as incompetent, irrelevant, and immaterial, calling for a conclusion of the witness, and no foundation laid; whereupon the Court orders the word "signals" stricken and instructs the jury to disregard it.)

Q. Who went down with you at that particular time? Who was in the house at that particular time with you? A. The first time I went down?

Q. No. The last time.

A. Mr. Miller and myself.

Q. You were there three times?

A. Three different times.

Q. The time you were in there at the stairway.

A. Mr. Wolcott and Mr. Frank Clark.

Q. Where were they? A. They were upstairs.

Q. How long did you stay there that time?

A. We stayed there from sometime about seven or a little after seven—I don't remember, until twenty minutes after eight, about twenty minutes after eight.

Q. What time did you go back there again?

A. Well, somewhere before nine o'clock, somewhere before nine. [269]

Q. Who went with you at that time?

A. Mr. Miller.

Q. Who did you see there?

A. Wooldridge and Laura Herrington.

(Testimony of George Berg.)

Q. What was said there?

A. We asked for— We came in the door and we saw Wooldridge there and we asked for Mr. Herrington. She said her papa was up town. That is about all that was said. We just said—asked for her papa, and she said he was not there, was up town.

Q. And you left right away?

A. We left right away, we didn't stay.

Q. Which way did you go after you left there?

A. Came right up town to the office, up Second Street.

Q. Did you go back again there that night?

A. I don't remember whether we went back that night or not. I have been there so many times, that I don't remember whether we went back again that evening or not. I think we did, though, I think Mr. Miller and I went back later on.

Mr. ROTH.—You may cross-examine the witness.

Cross-examination.

(By Mr. MARQUAM.)

Q. Mr. Berg, how long have you been here in the capacity of a Deputy Marshal in Fairbanks?

A. Since the first of September.

Q. You were regularly located, or have been at Nulato, have you not as a deputy marshal down there?

A. Yes. Before I came here. Yes, sir. I have been in several different places. [270]

Q. Was that your regular station at Nulato?

A. That was my headquarters.

Q. And you were supposed to cover that territory

(Testimony of George Berg.)

down there? A. Yes.

Q. You have been stationed here since September about? A. Yes, sir.

Q. When did you first know or hear anything about this so called Wooldridge case wherein you were supposed to take part in the investigation of it?

A. Well about sometime the fore part of February. I don't remember exactly now.

Q. About the time when you went up to the Herrington house?

A. Oh, no. I heard of it before that time.

Q. Did you know at that time that you were going to undertake an investigation for the purpose of getting evidence? A. Yes, sir.

Q. How long a time before you actually went up there did you know about that?

A. Well, I can't state exactly, but several days.

Q. Who did you get that information from?

A. Mr. Miller.

Q. You were working under his directions?

A. Yes, sir.

Q. What do you know about the purpose, Mr. Berg of installing this—what did you call it, Hali-day Detector? A. Detector. Yes.

Q. It is sometimes known as a dictaphone?

A. No, sir. I never heard it called that.

Q. Explain that to the jury as you understand it.
[271]

A. It is a mechanical device consisting of dry batteries, induction coil, about a hundred and fifty feet of wire, and a little—well it is something made

(Testimony of George Berg.)

on the same principal as a telephone receiver, just a little instrument. That is all there is to it.

Q. It is supposed to be very powerful to detect—
(interrupted).

A. It is powerful and delicate and will detect anything.

Q. Detect slight sounds?

A. Yes, sir. It will detect a whisper.

Q. It will amplify them, will it not, to a greater extent than the human ear unaided will receive them?

A. It depends on the distance.

Q. But even at a short distance isn't that true?

A. You can hear them distinctly.

Q. It works upon the same principle, does it not, as a telephone receiver?

A. Yes.

Q. But many times more powerful?

A. Yes.

Q. And it will be conveyed over a wire by electric current?

A. Yes.

Q. You knew when you went up there to install that detector, as you call it, what it was being put in for?

A. Yes.

Q. Did you know the purpose, the object which was to be accomplished, or attempted to be accomplished?

A. Yes, sir.

Q. What was it?

A. It was to learn whether or not Laura Herrington was telling [272] the truth.

Q. Did you doubt the truth of her story up to that time?

A. I didn't.

Q. Did anybody that was working with you?

(Testimony of George Berg.)

A. I don't know whether they did or not. I don't think they did.

Q. And yet, not doubting it, you wanted to learn whether she was telling the truth? A. Yes, sir.

Q. There must be a reason for that, either a doubt in your mind or somebody's mind that was responsible for this effort. Isn't that true George?

A. There was no doubt in my mind but what she was telling the truth.

Q. I understand that. It is not necessary for you to volunteer statements of that kind.

A. You asked me the question.

Q. The question is whether or not the person that was responsible for this investigation, inasmuch as you say the object was to find out whether she was telling the truth— Don't you know as a matter of fact that there was a doubt in their minds whether she was telling the truth?

A. I don't know whether there was in their minds or not.

Q. You were not one that was responsible—(interrupted). A. No. I was working there.

Q. —for installing this instrument?

A. No, sir.

Q. You were simply obeying orders?

A. Yes. That is all.

Q. You had been up to the house prior to the time that you [[273] took this detective—or detector up there and installed it in the house— When I say "up" it may be "down." It is down on Second Street. I am referring to the Herrington house.

(Testimony of George Berg.)

A. Well, I don't know positively whether I was or not. I have been there so many times. I may have been there and I may have not.

Q. Prior to this time?

A. Yes. I think probably I was.

Q. Many times?

A. Not prior to that time, but since that time.

Q. You have been there many times since?

A. Yes. Since.

Q. Do you know, have you any idea how many times you have been there?

A. No. I have only been there three or four times subpoenaeing witnesses. Probably half a dozen times.

Q. You have been there many times when you were not subpoenaeing witnesses?

A. I was there three or four times when I was not subpoenaeing witnesses.

Q. Who was there when you went down to install this instrument?

A. Mr. Herrington and Laura and Mrs. Herrington, I think, was there.

Q. Did you tell them that they would have to get away from there or go out somewhere? A. No, sir.

Q. Do you know whether anybody in the marshal's office did give Mr. and Mrs. Herrington those instructions? [274] A. I don't know.

Q. Who went with you when you installed this?

A. Mr. Miller.

Q. That was along in the evening about seven o'clock? A. Somewhere along in there.

(Testimony of George Berg.)

Q. Then after this was installed did you stay there?

A. No, sir. I came uptown, up to the office, and went back later.

Q. What time did you go back?

A. Oh, within—I don't know—within a short time.

Q. About how long. In other words, what was it when you got down there when you stayed?

A. It was some time before half-past seven.

Q. Who went down with you?

A. Mr. Wolcott and Mr. Clark.

Q. And they stayed there? A. Yes, sir.

Q. Wolcott? A. Yes, sir.

Q. You mean Ed Wolcott, the official reporter?

A. Yes, Ed Wolcott.

Q. He went upstairs? A. He did.

Q. And stayed there? A. Yes.

Q. What was he doing there?

A. He was on the end of the string to take notes.

Q. He had this receiver to his ear and his pencil out there to write down what was said? A. Yes.

[275]

Q. Did he write down anything? A. No.

Q. Did he have a light there upstairs, so he could see to write? A. No, sir.

Q. He was going to write in the dark?

A. Yes. That is it.

Q. He had this cap over his ears? A. Yes.

Q. Sitting there at a table? A. Yes, sir.

Q. And you were expecting to hear something. How were you going to hear?

(Testimony of George Berg.)

A. I was down on the stairway.

Q. So you were in sight? A. How?

Q. Were you behind something?

A. Yes. I was behind. I could see the door leading into the front room.

Q. What was to prevent those people in the front room from seeing you?

A. They couldn't see me unless they came up the stairway. There was a partition.

Q. You were around— A. Yes.

Q. —so you could peek around the corner of the stairs and see what was in the room?

A. No. I couldn't say I was in the room, but I could see part of the room.

Q. Who was this other man, Frank Clark?

A. Yes, sir. [276]

Q. Where was he perched?

A. He was upstairs in the front room.

Q. Did he have one of these detectors with him, too? A. No.

Q. He had to depend on his own hearing?

A. That is it exactly.

Q. Three of you up there? A. Yes, sir.

Q. Where was Laura? A. She was downstairs.

Q. Was she alone in the house with you three men?

A. She was in the front room downstairs.

Q. Was she with you three men alone in the house?

A. Yes. She was there all right.

Q. What did you hear when you were there? Tell us all— Tell this jury all you heard while you were there. A. Well, I heard some whistling.

(Testimony of George Berg.)

Q. Just tell us what you heard downstairs, not about any whistling, what you heard downstairs there in the house, if you know who was talking.

A. There was no one there except Laura.

Q. Nobody came?

A. Nobody came in while we were there; no.

Q. You finally got discouraged and quit your job there, did you? A. Yes, we pulled up a little too soon.

Q. And you went back again?

A. Yes. I could tell you the reason for pulling up, if you want to know. [277]

Q. You were in that attitude of mind that you was expecting to hear something and expected that you were going to hear something and wanted to hear something?

A. Yes; and there was a date made there.

Q. It was a disappointment to you that you didn't hear it. Isn't that true? A. Yes, it was.

Q. After all those elaborate preparations?

A. Yes.

Q. When you went back up there with Miller what did you go up there for, then? Were you going upstairs on that occasion to get up to this whispering machine?

A. No; I had taken it down and taken it with me.

Q. What did you go up there again for?

A. Mr. Miller wanted to talk to Laura Herrington, I suppose.

Q. What about?

A. I don't know.

(Testimony of George Berg.)

Q. Don't you know what he went up there for?

A. No. He can probably tell you.

Q. I ask you if you didn't hear Mr. Miller say, "I wonder if that girl is lying to us. We will go up there and see about it." Did you hear him make that remark? A. No, I can't say that I did.

Q. You wouldn't say positively that you didn't hear it, would you?

A. I think I would. If I had heard it, I think probably I would remember it.

Q. You never heard that? A. No.

Q. You and he went up there, and you came to the door, and [278] your coat collars were turned up?

A. Yes. He said to me, "We will take a walk up there. I want to see Laura."

Q. What I wanted to know was: When you got up there you had your coat collars turned up?

A. We had on our overcoats, yes, sir.

Q. And your collars were turned up so it would be difficult for a person to recognize you unless they got a good look at you?

A. Yes, possibly. It was a cold night and naturally we would have our coat collars turned up. We were both wearing hats.

Q. What was that?

A. It was a cold night and naturally we would have our coat collars turned up. We were both wearing hats.

Q. When you knocked at the door, you didn't expect to see Wooldridge there? A. No.

Q. You were surprised and you backed away as

(Testimony of George Berg.)

quick as you could?

A. I think Miller asked the question, was her papa home, and she said no, he was uptown, and we went right out.

Q. You went right out? A. Yes, sir.

Q. Couldn't you climb up and get around upstairs someway, anyway, get up there while he was there?

A. We didn't want to. We had no business up there at that time.

Q. Didn't you have just as much business to listen then when Wooldridge was there then as you did before, or wasn't that part of the program you were to carry out? A. Apparently not. [279]

Q. You are not sure whether you were back there again that night or not?

A. No. Probably we did, but I am not sure about that.

Q. If you did go back, what would be your purpose, what would you have gone back for?

A. If I did go back I would have gone back just to accompany Mr. Miller. He asked me to.

Q. I wish you would fix, if you can, more definitely, with reference to the day that you put this machine there, installed the machine, when it was that you first heard about this plan to set this seine, or whatever you call it, up there at the Herrington house?

A. I can't state definitely when it was that I first heard of it, but I can give you the date exactly when I installed the machine..

Q. On what day was that?

(Testimony of George Berg.)

A. On the fourteenth day of February, St. Valentine's day.

Q. While it may be impossible for you to give the exact date when you first heard about this scheme, give the jury an idea, as near as you can, when you first heard about it.

A. Well, it was some time before I went up there, before the fourteenth. I don't know how long. It may have been a week, or it may have been four or five days and it may have been ten days. I can't tell exactly.

Q. Would your best judgment be somewhere between four or five days and ten days?

A. Somewhere along in there, three or four days.

Q. Did you have any talk with George Herrington about this plan that you or Miller had in mind? [280]

A. No, sir.

Q. You never talked with him about it?

A. No, sir.

Q. Did you ever hear Mr. Miller or Mr. Herrington or anybody else say that Wooldridge was liable to be at that house with reference to delivering some potatoes there? Did you ever hear of that before?

A. I heard that Wooldridge had a date there at seven-thirty, but I never heard nothing about no delivering potatoes.

Q. When did you hear that?

A. I heard it either the day I went up there or the day before. I don't remember, but it had been—(interrupted).

Q. Had you heard any statements, whether you

(Testimony of George Berg.)

heard them direct from George Herrington or not, purporting to come from him, to the effect that Wooldridge would probably be up to the house there to see him about some potato matter?

A. No. I never talked to George Herrington.

Q. Did you hear any statement upon the part of anybody connected with this enterprise, Miller or anybody else, that Herrington had made such a statement? A. Not that I remember.

Q. And you, yourself, never talked to Herrington about it, you say?

A. No. I never talked to him about it.

Q. Now, after a miscarriage up at the other house, you undertook to lay—we will call it a trap for Wooldridge up here at Rose's, did you?

A. No, sir, I did not. The next day I left town and was out on the creek and didn't return until six o'clock the evening [281] of the fifteenth.

Q. Then it was laid in your absence, all the plans were made in your absence, and you were informed what they were?

A. I was informed about seven o'clock that I was to go into that hallway and see what I could get.

Q. You went through McDermott's place?

A. Yes, sir.

Q. And Woods went with you?

A. Wood was there before I arrived—John Wood.

Q. Where is Wood now.

A. He is on his way to Ruby.

Q. Left recently?

A. Yes. He left two or three days ago.

(Testimony of George Berg.)

Q. When you went up there and went into this hall you knew, George, what you were there for?

A. Yes, sir.

Q. You knew, you had an idea in your mind, what you were going to hear, didn't you?

A. I was told.

Q. Never mind what you were told. You had in mind what you were going to hear?

A. No, I didn't know what I was going to hear.

Q. You knew what you were likely to hear according to your views of it?

A. I didn't know anything about it.

Q. You knew what you wanted to hear?

A. No, I didn't know.

Q. Didn't you? A. No. [282]

Q. You didn't have any idea?

A. No, sir; I went there to listen to see what I could hear. I didn't know what I was going to hear.

Q. You cut a hole in the cloth and paper and between the boards? A. Yes, sir.

Q. How high up or low down was that?

A. Oh, it was only about that high from the floor (indicating). Probably three feet, I should judge.

Q. You had to sit down? A. I stooped down.

Q. Why didn't you cut one higher up, so that you could stand up and listen?

A. Because the cracks in the boards were not high enough. It happened to be a good high place.

Q. You wanted a good wide place to peek through?

A. Yes; so I could see what was in the room.

Q. What part of Rose's bicycle shop was this hole

(Testimony of George Berg.)

that you cut opposite? A. It was opposite the bed.

Q. Now, you stated in your direct examination that you were about six or eight feet from the bed.

A. I should judge about that.

Q. How wide is that room?

A. I couldn't tell you. I judge from where I was, it was about that. It may have been eight feet or it may have been a little further or a little less. I couldn't tell exactly.

Q. The bed, as I understand it, was against the opposite wall [283] from where you were.

A. Yes, sir.

Q. It is a narrow bunk, a narrow couch, single.

A. I don't know whether it is single or double.

Q. You could see over there and see it?

A. Yes, I could.

Q. Couldn't you tell from looking through that hole— A. No.

Q. —whether it was a single bunk or a double bunk? A. I didn't pay that much attention to it.

Q. Was it a couch or a bed or what?

A. Just a couch, I think, a homemade affair, I think. I couldn't tell exactly; it may have been a bed.

Q. If you don't know, you don't know.

A. But I could see Mr. Rose lying on it.

Q. You could see a bed and did see a bed?

A. Yes, certainly, but I don't remember now whether it was—

Q. You were standing up and leaning way over this way (indicating) and peeking through? A. Yes.

(Testimony of George Berg.)

Q. Couldn't you sit down on the floor there and be comfortable?

A. Not very well. It was cold in there.

Q. And you went there about half-past seven?

A. No. I went there about a quarter after seven.

Q. And stuck there until eight o'clock?

A. A little after eight.

Q. Did you have a pencil and paper and make notes of what you heard? A. I did not. [284]

Q. You couldn't write in the dark? A. No.

Q. Just tell the jury what the first thing that you heard or saw at the time that Wooldridge came in there.

A. The first thing I heard was that he said to Rose, "You have got too much light here," and he turned around and went out in the front part and turned the light out.

Q. You had been watching Rose there for three-quarters of an hour up to that time, or about that?

A. I had been there for some time.

Q. What had he been doing all that time?

A. He was just lying on the bed. I think he was reading. I am not positive about that.

Q. Now are you stating the exact words that Mr. Wooldridge used, or what you understand by them?

A. Yes, sir, as near as I can remember the exact words.

Q. The exact words?

A. As near as I can remember.

Q. That is what I want to get at; whether you are purporting to repeat the exact words, or stating your

(Testimony of George Berg.)

remembrance of the substance. There is a vital difference sometimes.

A. I will say that they are the exact words.

Q. Just give us again the exact words.

A. He said, "You have got too much light here."

Q. What did Mr. Rose say?

A. He said something, I don't know what it was. I suppose he told him to turn it out, or something, and he went out and turned it out. [285]

Q. Why don't you know?

A. Because he didn't talk as loud as Wooldridge did.

Q. Rose didn't talk as loud as Wooldridge?

A. Not at that time.

Q. Well, if you didn't hear what Mr. Rose said, why do you suppose he said something?

A. Well, I know he said something.

Q. But if you didn't hear what it was, why are you trying to tell this jury that you suppose he said something when you don't know anything about it?

A. I do know that he said something.

Q. No, you are supposing, and this jury should try to tell this jury what he said.

The COURT.—You are getting it pretty badly tangled up, Mr. Marquam.

Mr. MARQUAM.—I don't think I am tangled, your Honor.

The COURT.—The greater part of your question is purely argumentative, and the question has been answered.

Mr. MARQUAM.—Q. Will you explain to this

(Testimony of George Berg.)

jury why, when you did not hear what was said, that you tell them that you suppose that he said something about turning the light out.

Mr. ROTH.—We object to that as irrelevant, incompetent and immaterial, and has been already asked and answered.

The COURT.—You may answer the question if you can.

A. I don't know just what was said; I don't remember.

Mr. MARQUAM.—Q. That is not the answer to the question. You told us that, and it is perfectly plain that you don't know what was said.

A. I do—(interrupted). [286]

Q. But in answer to my former question, you answered to this jury, "I suppose he told Wooldridge to turn the light out."

A. I don't know whether he did or not.

Q. Why are you telling this jury that you suppose so; that that was what he said?

Mr. ROTH.—We object to that as—(interrupted).

Mr. MARQUAM.—All right.

Q. What is the next thing that was done or said, George?

A. The next thing after the light was turned out, he came in, and they talked about the picture show.

Q. Was that the first subject that they conversed upon?

A. After the light was turned out. Yes, sir.

Q. You mean by that the light in the front room?

A. Yes.

(Testimony of George Berg.)

Q. The light in the front room was still burning.

A. Was still burning. Yes, sir.

Q. Rose was still lying upon the bed?

A. Yes, sir.

Q. Where was Wooldridge?

A. He was right close to him.

Q. How was he facing; facing towards you?

A. No, sir.

Q. Facing from you?

A. Standing kind of sideways from me, facing Rose.

Q. Was he standing up or sitting down?

A. Part of the time, when he first came in, he was standing, and then I think he took a chair and sat down.

Q. When he first went in there and when he was standing, was his back to you?

A. Partly so. Yes. [287]

Q. It would naturally be so unless he turned around after he walked in there, would it not?

A. Yes. He moved around when he was in the room there considerably, moved back and forth.

Q. Then he sat down, and after he sat down how was he facing in regard to you?

A. He was sitting kind of side view, close to the bed.

Q. He was between the bed and you?

A. Yes. Off to one side a little.

Q. Well, now, just what did he say and what did Rose say about the picture show? I don't want the substance of what they said, but what you heard

(Testimony of George Berg.)

there, neither do I want your conclusion.

A. I heard him ask him whether he had went to the picture show lately, and Rose said he was there Friday night. I heard him say that, then they went on with a general conversation for awhile in regard to picture shows.

Q. What was the general conversation?

A. They spoke of the picture shows, what plays were on, and so on.

Q. What plays did he say were on?

A. I don't remember.

Q. That was what you were there for, to hear what was said. You don't remember. Can't you tell this jury anything about what was said in regard to the picture show? A. I have just told them.

Q. You said—we understand that. Did he say anything more about picture shows?

A. He may have done so. Yes. [288]

Q. That is not the question whether he may have done so. I have asked you what he done, not what he may have done.

A. He talked about going to the picture show.

Q. You are now stating the result and your estimate of what he said. I want you to repeat the conversation, what Wooldridge said and what Rose said. Use their own language.

A. I can't repeat their exact conversation.

Q. You can't do it? A. No.

Q. And you can't do any better than what you have already done in indicating to the jury what you have heard there in regard to the picture shows.

(Testimony of George Berg.)

A. Just what I have told them about the picture shows and about him—(interrupted).

Q. What was the next subject after the picture show was discussed?

A. After they were through talking about the picture show, they started in—I could just hear a little. They started in talking about a key or keys.

Q. What was said about the keys?

A. I couldn't tell you, because some of that I didn't hear. They spoke of keys and I heard Rose say that that was a key—with reference to some key. I didn't see the key, or anything about it—that that was a key to the front door.

Q. Did you hear that? A. Yes, sir.

Q. Didn't you tell Marshal Miller, when you first reported to him as to what you had heard there, that you didn't hear—that you heard the word "key," and that was all you did [289] hear. Didn't you tell Miller that? A. No.

Q. Are you willing to say now to this jury that you didn't tell Mr. Miller that?

A. I told him about the key. Yes.

Q. Answer the question. Read the question. Answer it the way I have asked it. Answer the question I have asked.

(Question read as follows: "Didn't you tell Marshal Miller, when you first reported to him as to what you had heard there, that you didn't hear—that you heard the word 'key,' and that was all you did hear. Didn't you tell Miller that?")

(Testimony of George Berg.)

Defendant objects as already answered. Overruled.)

A. I told him about the key. Yes. About hearing a conversation about the key. I heard the keys mentioned

Q. Isn't that the substance of what you told Miller; that you just heard "keys" mentioned, and that was all you did hear. Didn't you tell him that?

A. I don't remember. I know that I spoke to him about the key and told him that I heard a conversation something with reference to a key.

Q. Isn't that the substance of what you told Miller; that you just heard the word "key" mentioned, and you didn't hear what they said or know what they were talking about. Isn't that true?

A. I knew they were talking about the key. I didn't know what key it was, except—(interrupted).

Q. What are the facts you started to say awhile ago, repeat a sentence you were supposed to have heard there.

A. I simply said that I heard them talking about a key, mention something about a key. [290]

Q. Didn't you say a moment ago that you heard him say—after you said that you couldn't see the key—that you heard him say that was the key to the front door?

A. I heard Rose say "That is the key to the front door."

Q. Did you tell Miller, when you reported the result of your hearing, that you heard that?

(Testimony of George Berg.)

A. I don't know whether I did or not. I suppose I did.

Q. Don't you know as a matter of fact, that when you reported to Mr. Miller you told him you had heard something about a key, something about a key mentioned, but you didn't hear what the conversation was, or any of it? Answer that yes or no; what you told Miller when you first reported to him?

A. Repeat the question.

Q. (Last question read to witness.)

A. Yes. I told him about the key.

Q. That is not an answer to my question, Mr. Miller (evidently means "Berg"). I want you to answer this question directly: Whether you said anything more to Miller, as having heard it up in Rose's repair shop, when you were listening, than that you heard "keys" mentioned, and that was all that you did hear. Didn't you tell Miller that?

A. I may have done so.

Q. And if you told him so at that time that was the truth of the matter, wasn't it?

A. It probably was.

Q. And when you got Mr. Rose down there you told him he was lying and insisted that he had been talking about some key there, and he told you that he didn't remember a thing about [291] it, but you insisted upon it, and he said that if he had said anything it must have been about some key hanging up there?

A. No. It is not. I never told Rose he was lying.

(Testimony of George Berg.)

All I told Rose was to tell the truth in reference to the key.

Q. Not once?

A. No. Not once. I told him to tell the truth in reference to the key. That is what I told him.

Q. That is all your answer to that. What did you hear next?

A. I heard them talking about Laura Herrington.

Q. What was the first thing that they said about Laura Herrington?

A. I don't remember the exact conversation.

Q. Why, you were there listening. A. I know.

Q. You are supposed to remember.

A. I just told you why awhile ago, that it was in a low tone and I couldn't hear all that was said.

Q. You couldn't hear all that was said? A. No.

Q. Well, just repeat the words that you did hear. Don't give your estimate of it. What I mean is just tell this jury the words that you heard spoken there.

A. I can't repeat the exact words, but I can give you the substance of it.

Q. Can you repeat any of the exact words they used? A. I can give you the substance of it.

Q. I don't want the substance of it. I want you to tell this jury exactly what you heard. [292]

A. I can't do that.

Q. You can't do it?

A. No. I don't remember the exact words.

Q. How long were they there talking?

A. Probably fifteen or twenty minutes.

Q. And you can't tell this jury one word that you

(Testimony of George Berg.)

heard them speak? All you pretended to do is to give your idea of what the result of their conversation was. Is that it?

A. No. I have told them a good deal of what I have heard.

Q. I am talking about—just tell one thing. Just tell this jury one thing that you heard with reference to this Herrington girl, and who said it, and when it was said; and in asking that question I want to say again that I want the language that was used.

A. I told you that I couldn't repeat the exact language.

Q. Did you hear Mr. Wooldridge tell Rose anything about what had happened down in Mr. Herrington's house? A. No, sir.

Q. You didn't hear anything about that?

A. No, sir.

Q. Are you willing to tell this jury that that subject was not talked about? A. I didn't hear it.

Q. I understand, Mr. Berg, you say that you didn't hear it, but of course the situation in which you were in can only be conveyed to the jury by your statements. What I want to know; are you willing to say that that subject was not discussed or was not talked about, or are you simply pretending to say that you didn't hear it. [293]

A. No. I am not going to say that it was not discussed.

Q. It might have been and you couldn't tell?

A. I am not going to say that it was not discussed. I told you there was a good deal of that conversa-

(Testimony of George Berg.)

tion that I didn't hear because it was in a low tone.

Q. Was there anything said by Mr. Rose or by Wooldridge about the Herrington girl or these other girls chasing from cabin to cabin around town here soliciting money? Did you hear anything about that? A. No.

Q. Are you prepared to say that no conversation of that kind took place there?

A. I think so. I didn't hear it.

Q. You didn't hear it? A. No, sir.

Q. It might have been that part of this conversation that you didn't hear might have been about that?

A. I don't hardly think so.

Q. I don't want any think. Just state positively. If you can't tell say you don't know.

A. No, I don't know.

Q. You didn't hear anything about that?

A. No. I can state that they went out into the other room, in the front part, away from where I could see them and had a conversation that I didn't hear. I could hear them talking, but I couldn't tell what they said.

Q. What was the thing that was last said between Mr. Rose and Mr. Wooldridge before they left the back room and went out into the front part of the room? [294]

A. You mean before they left the back room?

Q. Yes. What was the last thing that was said?

A. I don't remember the last thing.

Q. Is that what you want to be understood, that you don't remember, or you didn't hear?

(Testimony of George Berg.)

A. I don't remember the last thing that was said, or I might not have heard it—the last thing.

Q. How far into the front part of the room did they proceed when they went out there?

A. I couldn't say. I couldn't see the front part of the shop.

Q. Could you tell by the sounds that you did hear?

Q. Yes. I did have an idea, you know.

Q. As I understand you, you didn't hear any of the conversation that occurred between them after they went out into the front room?

A. No. I did not.

Q. How far could they have been away from you at that time?

A. They could have been twenty or thirty feet probably away from me.

Q. Twenty or thirty feet?

A. Yes, sir. It is quite a long room.

Q. How long did they remain out there?

A. They didn't stay there very long, five or ten minutes.

Q. Then did they come back again? A. Yes, sir.

Q. Was that all before Laura Herrington came in?

A. No. I think that was after she came in. I am not sure.

Q. When Laura came in where was Rose and where was Wooldridge?

A. Rose was still laying on the bed. [295]

Q. And Wooldridge was where?

He was right there in front of the bed, close to it somewhere.

(Testimony of George Berg.)

Q. Sitting down or standing up?

A. He may have been sitting down or he may have been standing up. I don't remember exactly.

(The Court takes a recess until 4:05 P. M. and the jury withdraw in charge of the bailiffs after being admonished as usual, and subsequently come into court, and the defendant and the attorneys being present, the trial is resumed.)

Q. Could you then see her as she came through the store, that is, the front part?

A. I didn't see her in the front part. I saw her when she passed in front of me and went to the back end of that room.

Q. Do I understand you that at that time the light in the front part of the building was out?

A. Yes, sir.

Q. Did you see, at the time that the door opened and somebody, you not knowing who it was I presume but finding out afterwards that it was Laura Herrington, when the door opened, did you see Mr. Wooldrige get up and look out around the partition to see who it was?

A. I don't remember whether I did or not.

Q. He might have done that; looked out to see who was coming through the outer part of the store?

A. He may have done so.

Q. Did you hear Rose say anything at that time?

A. Yes, I did.

Q. What did you hear Rose say?

A. I heard him speak to the girl. [296]

Q. What did he say to the girl?

(Testimony of George Berg.)

A. He said, "Hello, Laura," or something like that, when she came in.

Q. Did he say, "Why, it is Laura," when she came around this partition so he could see her?

A. He called her by name. He said, "Hello, Laura," or something like that.

Q. Might it have been the expression, "Why, it is Laura"? A. It might have been so.

Q. He might have said that? A. Yes, sir.

Q. After she got within sight of you, Mr. Berg, so you could see her, what was the first thing that she did?

A. She passed right in front of me, between me and Rose, and went to the back end of this room, and I couldn't see her. She stood there or sat down. I couldn't see when she went clean to the back end of the room.

Q. What did Rose do then and there?

A. Why, I think he sat up on the bed and he said something in regard to Laura.

Q. What did he say?

A. He said that, "Laura can come and see me any time she wants to."

Q. Who was he talking to?

A. Talking to Wooldridge at the time.

Q. What had Wooldridge just said that brought up that statement?

A. I can't recall just what he did say.

Q. Did you hear what he said. [297]

A. I heard him say something.

Q. Were you able to hear what was said and have

(Testimony of George Berg.)

since forgotten what it was?

A. I know I was able to hear, but I don't remember now, because they were talking in loud tones at that time, talking as we are talking now when she came in.

Q. But you don't remember a thing about the statement that Wooldridge had just made to him before that, before that remark that Mr. Rose made "Laura can come to see me whenever she wants to." Is that it? A. Something like that.

Q. What was the next thing that was said or done?

A. I don't just remember what the next thing was, but they talked on there for a while.

Q. Who did?

A. The three of them. They were talking back and forth.

Q. What did Laura say?

A. I don't remember what she said now.

Q. Do you mean that you didn't hear what she said, or don't remember what she said?

A. Oh yes, I heard at that time because they were talking as we are talking now, but I don't remember the exact conversation.

Q. If you don't remember the exact language, can you tell what the subject was that she was talking about? A. I can't recall now.

Q. You can recall nothing that either Laura or Wooldridge or Rose said after Rose made the remark, "Laura can come to see me whenever she wants to." [298]

(Testimony of George Berg.)

A. Not at that time I don't remember just what was said.

Q. How long did they stay there and talk? The conversation, or the substance of which, or the language of which you are not able to remember, how long did that continue?

A. It was only a very short time.

Q. About how long?

A. A few minutes, probably five minutes.

Q. And you can't tell this jury during that period of five minutes anything that was said?

A. In reference to this remark that she could come and see him any time she wanted to, and they were joshing back and forth, and then Rose and Wooldridge went into the front part and I couldn't hear what they were saying.

Q. I want to make it clear. Before they went out, during that period of five minutes, I want to know if there is anything that you can tell that you heard during that five minutes?

A. It may not have been five minutes, a few minutes.

Q. It don't matter how long it was. The question is what you heard.

A. I don't remember just the conversation.

Q. You say they were talking loud.

A. Yes, they were. I don't remember the exact words.

Q. What?

A. I don't remember just what was said.

Q. You were there for that purpose.

(Testimony of George Berg.)

A. How?

Q. Wasn't your instructions—(interrupted).

A. Yes. [299]

Q. —from Mr. Miller to hear and remember so you could repeat everything that was said.

A. That would almost be impossible to repeat everything that was said, because I couldn't hear it all.

Q. Wasn't that your instructions?

A. My instructions were to get what I could.

Q. On any particular subject?

A. Whatever they talked about.

Q. They were talking in a louder tone of voice then after Laura came in than they had been previously, were they, George? A. Yes, sir.

Q. I understood you to say that previous to that time they were talking low, in a low voice.

A. Yes.

Q. Now will you give this jury the language which was employed by Mr. Rose or Mr. Wooldridge with regard to this conclusion that you came to with regard to Wooldridge wanting to have connection or sexual intercourse with this girl. Just tell this jury exactly what was said.

A. I can't tell you just the exact language. I don't remember because I didn't hear it all.

Q. You didn't hear it all? A. Not all. No.

Q. That was just a conclusion that you reached?

A. It was not a conclusion. I heard some of it.

Q. Just tell this jury just what you heard, in the language that you heard it.

(Testimony of George Berg.)

Mr. ROTH.—He has already said he couldn't give it in the language [300] in which he heard it, and we object to the question.

The COURT.—Q. Is there any part of it you can give to the jury in the exact language that you heard?

A. Not, only in substance. I know that her name was mentioned.

Mr. MARQUAM.—Q. That is as far as you can go?

A. And the substance of it was—(interrupted).

Q. I don't care what the substance of it was, or what conclusion you came to; I want you to answer what my questions are directed to in regard to that; the language you heard, and if you can't repeat any of it, then you can't.

Mr. ROTH.—He has already said that he couldn't state it in the exact language.

Mr. MARQUAM.—I just want to be sure about that.

Q. Well, after they had been out in the front room—as I understand you, they went out into the front room while Laura was in the back room.

A. Yes, sir.

Q. The light was still burning?

A. In the back room. Yes.

Q. In the back room?

A. But not in the front room.

Q. Do I understand you that while they were out in the front room they were whispering or talking?

A. They were talking and whispering so I couldn't

(Testimony of George Berg.)

hear what was said.

Q. Do you know whether they were talking or whispering, or do you mean to say to this jury that you didn't hear what was said? [301]

A. No, I didn't hear what was said.

Q. By reason of the distance?

A. I don't know whether they were whispering or talking. If they had been talking real loud I would have heard it, probably.

Q. If they were talking extra loud?

A. I think if they were talking as we are talking now, I would have heard it because the distance wasn't great and the partition was just an ordinary thin board partition with cracks in it.

Q. Well, I understood you to say that they might have been thirty or forty feet, or twenty or thirty feet away—

A. Twenty or thirty feet, something like that.

Q. —up towards the front of the store.

A. Up towards the front of the store.

Q. I want you to give this jury the substance of your testimony as to whether or not you can state whether they were whispering or talking when that happened. A. No, I can't tell that.

Q. They might have been talking in an ordinary tone?

A. They might have been talking in an ordinary tone, but I didn't get what was said when they were up there.

Q. About how long in minutes was that?

A. It was very short, probably a couple of min-

(Testimony of George Berg.)

utes, two or three minutes. I couldn't tell how many.

Q. Did you hear Laura at any time she was in there, or when she came in, or after she came in, say anything to Wooldridge to the effect that somebody was following her? A. No, sir. I did not.

Q. Might that statement have been made by her in that room [302] without your being able to hear it?

A. I don't think so, because she was right close to me all the time.

Q. Right close to you?

A. And if she had made that statement, she would have made it loud and I would have heard it.

Q. How do you know she would have made it loud?

A. The way she talked when she came in.

Q. What was the first thing that she said when she came in? I asked you a while ago and you were not able to say.

A. They greeted her with "Hello" and she said "Hello."

Q. You didn't tell that before.

A. They said "Hello, Laura," or something like that, and she said "Hello."

Q. What else? Was there anything else that she said? A. How?

Q. What else did she say that you heard?

A. I don't remember now.

Q. When she first came in and came alongside of Rose past this partition, were not she and Woolldridge pretty close together there when he got up to

(Testimony of George Berg.)

look around that partition?

A. I don't remember whether they were or not. She passed him, evidently passed him to get by.

Q. Now might she have said at that time as she passed him and was close to him that she was being followed, or words to that effect, and you might not be able to have heard it?

A. I think I would have heard it if it was the first thing she said.

Q. I don't mean exactly the very first thing, but along about [303] that time.

A. I don't think she said it, because if she did I would have heard it.

Q. You don't know whether she said it or not.

A. No. I couldn't say positively.

Q. After they got through talking out in the front room, just tell us the next thing that was done.

A. Well, I think they came back, or one of them came back, and then they went out, went out of the building and left her there.

Q. Well now, you say you think either one or both of them came into the back room. A. Yes.

Q. Did you hear them say anything then?

A. I couldn't hear what was said. There was something said but I couldn't tell what it was.

Q. Did they do anything while they were in there?

A. Just talked and—(interrupted).

Q. What did they say?

A. I couldn't make out what they said.

Q. You couldn't hear it?

A. No. I couldn't hear it to tell just what they

(Testimony of George Berg.)

were talking about. There was something said, I know that, but I don't know what it was.

Q. Did they say anything to Laura? A. Yes.

Q. What did they say to Laura?

A. I just told you I don't know what they said. I couldn't hear.

Q. You couldn't tell what was said by them, either to Laura, [304] or what Laura said to them, or what they said to each other?

A. After they came back, no.

Q. The light was still burning then. You could still see them? A. I could see Laura.

Q. Had she moved from the back part of this room forward so you could see her?

A. Yes. She stepped around.

Q. Was anything done, besides what might have been said, that was out of the ordinary? A. Yes.

Q. What did they do?

A. They turned around and went out, and she turned out the light.

Q. Did you hear them tell her to turn out the light? A. No.

Q. Did you hear either one of them, Rose or Wooldridge, tell Laura to turn out the light?

A. I don't remember of hearing it.

Q. Did she turn out the light after they had gone out of the back room, just after they went out of the back room?

A. No. I think she turned it out just as they were leaving.

(Testimony of George Berg.)

Q. Then the whole building was in darkness, was it?

A. The whole building was in darkness. Yes, sir.

Q. You don't know, as far as your sense of sight was concerned, what did happen, whether they went out or what happened?

A. I could hear them walking out, and I could hear them in there after the light went out, and I could hear them close the door.

Q. I asked you before where this light in the back room was [305] situated. A. Yes.

Q. Where was it?

A. I can't tell you the exact location in the room. It was in the room there.

Q. Were you able to see her actually turn it out, or did you just see the light go out?

A. I just saw the light go out. I know she was the only one there, because they had already gone.

Q. Wasn't that light right over the bed in full view of you?

A. I think it was off a little to one side.

Q. When Mr. Rose was lying down on his bunk or bed, or whatever it was there, wasn't the light right up over his bed so he could see to read by it?

A. I am not positive whether it was or not. It may have been off to one side.

Q. You didn't actually see her walk up and turn it out, but you just saw it go out.

A. I saw it go out.

Q. And you assumed she turned it out?

A. She was the only one there at the time.

(Testimony of George Berg.)

Q. So far as your knowledge was concerned, there might have been a switch for that light somewhere else?

A. There might have been a switch, but I know the light was turned out.

Q. They went outside of the door, did they?

A. Yes, sir.

Q. How long were they gone?

A. I couldn't tell exactly. Not very long, a few minutes. [306]

Q. Did they both go out of the door?

A. I couldn't say whether they did or not. I heard them walking; I heard the door open and close, and I naturally supposed they did.

Q. That is just a conclusion that you came to, from that circumstance, that they both went outside?

A. Yes.

Q. Is this hall there that you were in, connected with Lacey Street? A. Yes, sir.

Q. You could walk, could you, from where you were in this hall right out to Lacey Street?

A. No, no.

Q. What was to prevent you?

A. There was some boxes and rubbish and stuff in that hallway.

Q. You couldn't get through?

A. I didn't try to get through.

Q. When you went out you went the way you came, through McDermott's store? A. Yes.

Q. Now at what point in this proceeding did you quit this post that you had, where you had this hole

(Testimony of George Berg.)

in the wall, and go out?

A. When Mr. Miller came in and called me.

Q. How long was it after you heard this front door close?

A. Oh, probably ten or fifteen minutes, I don't remember.

Q. Was it that long?

A. I think so. About ten minutes.

Q. When you came out and around, where was Rose and Wooldridge? [307]

A. I didn't go out around.

Q. Where did you go?

A. I came out and came down to the office.

Q. When you got down to the office then they were there? A. Yes, sir.

Q. Now have you told, either in your direct examination or in your cross-examination, Mr. Berg, everything in the way of conversation, and repeated everything in the way of conversation that you heard there that you can remember?

A. Practically so. Yes.

Q. Is there any special thing or any particular thing that you haven't testified about that you did actually hear and can tell and give the language that was used? A. I don't remember at this time.

Q. When you got down to the office you found there—

A. I found Mr. Rose and Wooldridge and Laura Herrington there.

Q. At the marshal's office? A. Yes, sir.

Q. In what room of the marshal's office?

(Testimony of George Berg.)

A. In the private room.

Q. In the private room, and who was there?

A. Miller and McMullen and Hall, myself and John Wood.

Q. Besides these three persons? A. Yes, sir.

Q. That was five deputies, was it? A. Yes, sir.

Q. Who did you or any of the deputies talk with first?

The COURT.—When and where?

Mr. MARQUAM.—In this private office.

A. Why, I talked with Mr. Miller first, or he rather talked to [308] me. He told me to stay at the door.

Q. Of course, I don't care anything about that particularly. What I want to know, who, of the three persons that were there besides the deputies, Wooldridge, Laura Herrington or Rose, did you or any of the persons that were with you talk with first?

A. Why, I couldn't say exactly, but I think that Mr. Miller talked to Laura Herrington first.

Q. In your presence?

A. I think so. I wouldn't be positive about that.

Q. What was said?

A. I can't tell exactly now just what was said.

Q. Do you know what subject then, without giving your conclusions, what subject they were talking about?

A. Yes. They talked in reference to what took place.

Q. Where?

The COURT.—Do I understand you that you

(Testimony of George Berg.)

make Mr. Berg your own witness now? I do not remember any direct examination on the question of his talking with Laura Herrington or with Mr. Wooldridge in the marshal's office. There was some direct examination about talk with Mr. Rose.

Mr. MARQUAM.—That was all at the same time, as I understand it.

Mr. ROTH.—No. That was at a subsequent conversation when Mr. Rose went down there alone.

Mr. MARQUAM.—Q. These questions that Mr. Roth asked you upon direct examination a while ago with regard to what Mr. Rose had said and done; were all those questions and all your answers directed to a subsequent meeting with Mr. Rose?

A. They were the answers to the second time when he was there. [309]

Q. Entirely so? Were not any of the answers that you gave—

A. No. Because I just stood in the door there and Mr. Miller went away and brought Mr. Roth. I didn't ask no questions at that time. That was later when Mr. Rose was there.

Q. Did Mr. Roth come there at that time?

A. Yes, sir.

Q. Did he go into the private office?

A. I think so.

Q. And you were not inside; you were simply watching on the outside?

A. I was standing at the door.

Q. You don't remember anything about what occurred in the way of conversation?

(Testimony of George Berg.)

A. I don't remember.

Q. Did you hear them?

A. I heard them talking, but I didn't pay a great deal of attention to it.

Q. Why not?

The COURT.—If this was a different time you certainly do not want to make him your witness at this time.

Mr. MARQUAM.—No. I do not, but I think this is proper cross-examination. It is all a transaction connected together.

Mr. ROTH.—We object on the ground that it is not cross-examination.

(Objection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—Q. How long after this time was it that Mr. Rose came down to the office when he had the conversation that you talked about?

A. I couldn't tell exactly. It couldn't have been over fifteen [310] or twenty minutes, because I went home—or I went home with Laura Herrington, took her home, and when I returned Rose was back there.

Q. While you were there in this room had Rose left and gone away? A. Yes.

Q. You saw him do that? A. Yes.

Q. And you saw him come back?

A. I didn't see him come back. He was back when I returned after taking Laura Herrington home.

Q. Now, when you got into the room there with

(Testimony of George Berg.)

Rose alone, and, as I understand it, with these deputies, yourself being one— A. Yes, sir.

Q. —what was the first thing that was said to him?

A. As near as I can remember Mr. Miller asked him to tell what took place over there, the conversation and so on.

Q. Well, what did he say?

A. He went on to make a statement.

Q. What did he say?

A. It is right there on that exhibit there, what he said.

Q. Never mind that. I want you to tell this jury what he said.

A. He made the statement. I don't remember just the words.

Q. Use his language as far as possible.

(Plaintiff objects as irrelevant, incompetent and immaterial, not proper cross-examination, and not the best evidence, because it is in writing.)

The COURT.—You may state to the jury, as nearly as you [311] recollect, what words were used, what conversation.

A. He started in to tell about the conversation and then he said he couldn't remember just what the conversation was, and he said, "Perhaps you can refresh my memory," and I did, I said, "Tell Mr. Miller in reference to what was said about that key that you were talking about," and so on along.

Mr. MARQUAM.—I want to interrupt you right there for a minute.

(Testimony of George Berg.)

Q. At the time that you made that statement in his presence, you took that opportunity to make him think that you had heard something about a key, when, as a matter of fact you had not heard anything except the word "key" mentioned. Isn't that true? A. No. That is not true.

Q. State what the facts are in that connection.

A. I will have to state then what was said. He started to make a statement, talked about the picture show, the same as he did. He said they were talking about the picture show, and he got up at that time, spoke at that time in a low tone. Then I asked him to tell me what was said about the key and he did so.

Q. What did he say?

A. He said they had talked about the key, had talked about a key, the key was mentioned he said. He didn't remember just what the conversation was, but that they had talked about a key.

Q. Didn't he say at first that he didn't remember anything about a key being mentioned until you said he was lying, or words to that effect? [312]

A. I never told him that he was lying.

Q. Didn't you tell him he was mistaken; that you heard what he had said about the key and you wanted him to tell about it?

A. No. That was on another subject.

Q. Isn't that true about the key?

A. No. It is not.

The COURT.—Go ahead and tell the jury—Mr. Marquam, I want him to go ahead and complete his

(Testimony of George Berg.)

answer to your question to go ahead and tell the jury, then, if you want to go back and fix up different parts of it, very well; but you never will get along by interrupting every statement he makes.

Mr. MARQUAM.—I am perfectly willing that Mr. Berg should do that if he will go ahead and tell this jury just what was said, and not draw his own conclusions.

The COURT.—Now, Mr. Berg, you may go ahead and tell to this jury, as far as you know, what was said when Mr. Rose was being questioned by Mr. Miller.

A. Well, he told us about the conversation that took place over there in reference to the picture show, and what he said, that he had been there either last week or a few days before, and told us about—well, in the first place, he said he didn't remember just exactly the exact words or just what was said, and he said, "If you can refresh my memory occasionally, it might come to me," and at different times I would say, "Well, tell Mr. Miller what you said in reference" to such and such a thing, "in reference to the key" and "what you were talking about, about Laura Herrington," and he answered the question.

Mr. MARQUAM.—I must interrupt you. I don't want any reference [313] to that statement. I want your testimony to this jury as to what you heard.

A. And he said from what Wooldridge said he in-

(Testimony of George Berg.)

ferred that he wanted to have sexual intercourse with her.

Q. Now, Mr. Berg, is that his own statement to start with—

A. Yes, sir. That is what he understood the substance of it.

Q. —or is that one of the times you told him he was lying? A. I never told him he was lying.

Q. At no time?

A. No, sir. I told him to tell the truth and tell exactly what was said.

Q. And you didn't use that one word with reference to that part of the statement? Did you stop him there and tell him he was not telling the truth?

A. I might have stopped him and refreshed his memory.

Q. Let me ask you this: At that particular time didn't you, in attempting to refresh his memory, use this language with reference to that affair that is contained in this statement, and made some sign of agreeing to it, and it was put down in that way?

A. No.

Q. You are sure of that? A. Yes, sir.

Q. That is his own language used in that statement, is it? A. Yes, sir.

Q. With no suggestion from you?

A. All I told him was to tell just what took place in reference to the conversation between him and Wooldridge about Laura Herrington.

Q. Miller had told him that, hadn't he? Was there any [314] necessity of you tell him that,

(Testimony of George Berg.)

if you didn't think he was not telling something that wasn't straight?

A. I knew he was not telling something that wasn't straight.

Q. That is what I want. At the time you were saying that he wasn't telling something that wasn't straight, was the conversation about that part of the statement that contains the language about wanting to have sexual intercourse with her? Was he trying to tell that straight?

A. He said that he couldn't remember the exact words but the sum and substance of it was just what is stated on there.

Q. Wasn't that your suggestion in refreshing his memory and telling him that you heard those things? Didn't that come from you, Mr. Berg?

A. No. It was not my suggestion. I simply told him to tell exactly what the conversation was between him and Wooldridge with reference to Laura Herrington.

The COURT.—That is the third time that question has been answered. Now, some other question.

A. And then—(interrupted).

Mr. MARQUAM.—Just a minute.

A. I will tell the jury just what took place if you want me to.

Q. That is what I have been trying to get you to do and not give your conclusions. If you will just repeat the language of yourself or Mr. Rose or any of these other persons when they talked, as near as you can, without stating the substance of it, then I

(Testimony of George Berg.)

will be very glad to have you tell the jury.

The COURT.—Have you anything else to tell the jury that happened down there, in response to Mr. Marquam's question?

A. Yes, sir. He would go on and make a statement, a sentence or [315] two, and he would say, "I don't remember just what happened now. If you will refresh my memory I don't know just what we were talking about at that time." I would say to him, "Now tell Mr. Miller what you said with reference to the grand jury," and would refresh his memory, and then he went on and stated what was said with reference to the grand jury.

Mr. MARQUAM.—Q. Just what did he say with reference to the grand jury on this particular occasion?

A. Well, he said that the grand jury was in session, and that he advised Mr. Wooldridge to not do what he intended to; that he was liable to be caught up at it, something like that.

Q. Is that what he said?

A. Something to that effect. Yes.

Q. Just tell us again whether that is what he said or whether that is what you understand as the effect of it.

A. As near as I can remember, that is what he said. Yes.

Q. You said awhile ago that this statement was written in sections. What did you mean by that?

A. There was a paragraph or so written, then Mr. Rose was asked if that was right and if that was his

(Testimony of George Berg.)

voluntary statement, and he would say, "Yes."

Q. What was his condition at that time as far as being nervous and worked up and excited and so on?

A. I didn't see anything unusual.

Q. Was he perfectly calm and collected?

A. He seemed to be.

Q. He wasn't apparently in fear?

A. I don't see why he should be. [316]

Q. I didn't ask you why he should be. I asked you if he was. A. I didn't notice that he was.

Q. Wasn't he very nervous?

A. I don't think so. He didn't appear to be to me.

Q. When one of these sections that you refer to was written out, was that particular part read to him carefully? A. Yes, sir.

Q. And he was asked if that was correct, if that statement was all right, and he said, "yes"?

The COURT.—That is about four times on that.

A. That is just as it occurred. That is just what he said.

Mr. MARQUAM.—Q. And he was perfectly calm and collected all during the time; not during part of the time, but during all of the time?

A. I didn't see anything unusual about him. I am not much acquainted with the man. He seemed to be perfectly normal to me.

Q. How long was he there?

A. He was there probably half or three-quarters of an hour. I couldn't say positively.

Q. Half or three-quarter of an hour?

(Testimony of George Berg.)

A. Something like that.

Q. Were you and the deputies half or three-quarters of an hour preparing this paper?

A. Undoubtedly so.

Q. Then I presume it must be taken for granted that this statement contains nowhere near the amount of conversation that occurred between the deputies and Mr. Rose?

A. Just exactly the statement he made is right there. [317]

Q. Did he make any other statements that are not here with reference to this transaction?

A. I don't think so.

Q. Do you want to tell this jury that you were three-quarters of an hour or thereabouts, getting Mr. Rose to tell this, what is on those two pages?

A. It may have been half an hour, or it may have been three-quarters.

Q. Well, then, putting it at the lowest figure, do you mean to tell this jury that there was no other conversation that went on there except what is contained in this paper, upon the part of Mr. Rose?

The COURT.—That is not the testimony.

Mr. MARQUAM.—I am asking him about it.

Q. Can you answer that question?

A. I can't fix any time, whether a half hour or what.

Q. You fixed the time from a half to three-quarters of an hour, whatever time it was, I don't care. I assume it was not less than half an hour or more than three-quarters of an hour. I want you to an-

(Testimony of George Berg.)

swer this question: If, during that period of time, whatever it was, there was any conversation had upon the part of Mr. Rose except what you contend was contained on these two pieces of paper?

A. That is practically it. Yes, sir.

Q. What is practically it? What is on this paper?

A. Yes, sir.

Q. Is that the best answer that you can give to that question?

A. Yes, sir. He was told by Mr. Miller at different times to tell just exactly what took place over there, and tell the truth; that that was all he wanted.
[318]

Q. Was your attitude towards Mr. Rose at any time threatening? A. No, sir.

Q. You spoke to him calmly and collectedly in the same manner you are speaking now in answer to my questions?

A. Yes, sir. I told him, when he couldn't remember and wanted his memory refreshed, then I would draw his attention to these little things that he had said and tell him to tell just exactly what took place, to tell Mr. Miller just what took place.

Q. Was your attitude the same, or practically the same, as it is now in testifying before this jury?

A. Just about the same.

Q. No more civil or threatening than it is now?

A. I never threatened him.

Q. I didn't mean threaten him in so many words, but I mean in the way of your attitude.

(Testimony of George Berg.)

The COURT.—That question has already been answered. Ask your next question.

Mr. MARQUAM.—You may take the witness.

Mr. ROTH.—Nothing further. [319]

Testimony of J. H. Miller, for Plaintiff.

J. H. MILLER, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Miller, what official position do you occupy? A. Chief deputy marshal.

Q. Fourth Division, Territory of Alaska?

A. Yes.

Q. Are you acquainted with Laura Herrington?

A. I am.

Q. Acquainted with W. H. Wooldridge?

A. I am.

Q. Did you make a special investigation with reference to the second count in the indictment in this case?

A. If you will tell me what the second count is—

Q. The charge of an attempt to commit rape.

A. Yes, sir. I understand you.

Q. Did you make a special investigation in that matter? A. I did. I caused it to be made.

Q. Mr. Miller, when were you first apprised of the facts out of which this indictment grew?

A. Why, the first knowledge I had of it was in your office.

Q. Can you give about the date?

(Testimony of J. H. Miller.)

A. Well, I think it was about the 11th or 12th, something along there, of February.

Q. Of February of this year? A. Yes, sir.

Q. How—what led up to your being in my office at that time, Mr. Miller?

A. I was requested by you to—(interrupted).

[320]

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. I was requested by you to get Laura Herrington and her father George Herrington and bring them up to your office, and, complying with that request, I sent George Berg out and he got George Herrington and brought him down to our office, and I told them to go down—(interrupted).

(Defendant objects as hearsay. Overruled. Defendant excepts and is allowed an exception.)

A. I told him to go down and bring Laura Herrington up to the office, which he did.

(Motion to strike out what the witness said he told anybody else outside of the presence of the defendant. Motion denied. Defendant excepts. Exception allowed.)

A. I then took Laura Herrington and her father up into your office, and the conversation there ensued between yourself and Laura Herrington.

Q. On what subject?

(Defendant objects as irrelevant, incompetent, immaterial. The Court states that the question is, what led up to the investigation. Objection over-

(Testimony of J. H. Miller.)

ruled. Defendant excepts. Exception allowed.)

A. Conversation between yourself and Laura Herrington in regard to another case similar in its nature to this one.

(Defendant moves to strike answer as hearsay.)

Q. What case?

(Defendant—continuing objection—as incompetent and irrelevant testimony. Objection overruled. Defendant excepts and is allowed an exception.)

A. It was in regard to another case of a similar nature.

Q. What case? A. The Bobby Jones case.

(Defendant moves to strike the answer as irrelevant, incompetent and immaterial. Motion denied. Defendant excepts. Exception allowed.)

Q. No, go ahead, and state how—(interrupted).
[321]

A. Then, if I remember correctly, either yourself or myself asked the girl if—(interrupted).

(Defendant objects to witness testifying to any conversation occurring between either Mr. Roth or this witness with this girl, not in the presence of the defendant. Objection overruled. Defendant excepts. Exception allowed.)

A. In answer to some question, if anyone else had ever bothered her or committed any crime upon her, she stated—(interrupted).

(Defendant objects as incompetent, irrelevant and immaterial and pure hearsay. Objection overruled. Defendant excepts and is allowed an exception.)

A. And she stated in answer, that W. H. Wool-

(Testimony of J. H. Miller.)

dridge, or "Mr. Wooldridge" as she said, had had sexual intercourse with her about a year ago last Christmas time, or around that time, in a cabin up by her home—by his home, up near his home some place.

(Defendant moves to strike the answer as hearsay, incompetent, irrelevant and immaterial, and asks that the jury be instructed to disregard it. The Court: "Again calling your attention to the fact that the question was asked as to what led up to the investigation, motion denied." Defendant excepts and is allowed an exception.)

Q. Now, go right ahead and tell what led up to this investigation.

(The COURT Continues: "The jury are instructed that that is the only purpose for which this testimony is admitted." Defendant, by Mr. Marquam, moves the Court to strike the testimony at this time and instruct the jury that the statement of the witness Laura Herrington with regard to the commission of any other crime before the commission of the crime charged in this indictment is pure hearsay and inadmissible for any purpose, and that they be instructed to disregard it.

The COURT.—"The jury are instructed that the answer just given by the witness Miller is not to be considered by you—having been made by her in the absence of the defendant, is not to be considered by you for the purpose of proving any crime; the purpose for which the testimony is to be considered by you at all is to show what led up to the investigation

(Testimony of J. H. Miller.)

concerning which the district attorney has asked the witness.”)

Q. Go right ahead, Mr. Miller. [322]

A. After she had made such a statement, I asked her if Wooldridge had ever bothered her—(interrupted).

(Defendant objects to any further answer upon the part of the witness along that line, as hearsay, incompetent, irrelevant and immaterial; and asks that the answer as far as it has gone be stricken, and the jury instructed to disregard it. Objection overruled. Defendant excepts and is allowed an exception.)

A. I then asked her—(interrupted).

(Mr. Marquam, for defendant, states that he would like to suggest that these questions, or this testimony, be the result of questions asked by the District Attorney, so that he may have an opportunity to object to them before they get before the jury; and the Court directs that the examination be so conducted.)

Q. What, if anything, did you ask her after she made that statement to you?

(Defendant objects as incompetent, irrelevant, immaterial, and calling for a hearsay answer. Objection overruled. Defendant excepts. Exception allowed.)

A. I asked her if Wooldridge had ever attempted a thing like that since, or had ever tried to get her to do anything like that.

Q. What did she answer?

(Testimony of J. H. Miller.)

(Defendant objects as incompetent, irrelevant, immaterial and calling for a hearsay answer. Objection overruled. Defendant excepts. Exception allowed. Mr. Marquam, for defendant moves, and asks that the record show, that all of this testimony upon this matter of the statements made by the witness Laura Herrington to the witness Miller, in the absence of the defendant, be stricken from the record. Motion denied. Defendant asks and is given an exception.)

A. In answer to that, she said to me that Wooldrige had many times.

Q. Then what did you say to her?

(Mr. Marquam asks if the record may show that after each answer given of this kind of testimony that his objection be considered.

The COURT.—“The same objection or the same motion?”

Mr. MARQUAM.—“I will ask for the same motion also.”

The COURT.—“Objection overruled; motion denied.”

Defendant excepts. Exception allowed.) [323]

A. She said he had bothered her many times since that time.

(Defendant makes the same motion to the testimony. Denied. Defendant excepts. Exception allowed.)

Q. Then what did you say to her?

(Defendant objects as incompetent, irrelevant, immaterial and hearsay. Objection overruled. De-

(Testimony of J. H. Miller.)

fendant asks and is allowed an exception.)

A. I told her then that if he ever bothered her again and tried to make a date with her for this same purpose that she had explained before, to go ahead and make a date with him and then let me know about it, either bring me the word herself or send the word by her father.

(Defendant makes the same motion to strike. Denied. Defendant excepts. Exception allowed.)

Q. And what did she say to that?

A. She said—(interrupted).

(Defendant objects as incompetent, irrelevant and immaterial and hearsay. Overruled. Defendant excepts and is allowed an exception.)

A. She said that she would do so; that if he came to her again. That is what I said to her: "If he comes to you." She said if he came to her again on any such purpose, she would make a date with him and let me know about it.

(Defendant makes the same motion to strike. Denied. Defendant excepts. Exception allowed.)

Q. Why did you make that suggestion to her?

(Defendant objects as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness. Objection overruled. Defendant excepts and is allowed an exception.) [324]

A. The idea was in making her—in saying that to her that I would see the two of them together, and I would form a plan whereby there would be a conversation between them in regard to this time with which she charged with having committed this crime

(Testimony of J. H. Miller.)

upon her, and I would be able at that time, if they were alone and didn't know there was anyone else around, to determine whether or not the girl had been telling the truth.

(Defendant makes the same motion; same ruling. Exception, and exception allowed.)

Q. What was the next step leading up to this time?

A. The next that I heard of this, in connection with this matter, was when her father, George Herrington, if I remember correctly, came to me during Valentine's day, the fourteenth day of December (evidently means February) and told me—(interrupted).

(Defendant objects to any conversation on the part of George Herrington in connection with this matter, as pure hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. February, Valentine's day.

Q. What did he say?

A. And he told me that the little girl had sent him word that she had made a date at her home, or their home, at seven-thirty o'clock of that evening with Mr. Wooldridge.

(Same motion by defendant, same ruling, and exception, and exception allowed.)

Q. What, if anything, then did you do as the result of that information that you had received?

A. I then went down in the evening—I don't remember what time it was now, but it was probably five o'clock—and [325] looked that house over for the purpose of seeing if I could put men in there

(Testimony of J. H. Miller.)

and things in there to find out the truth of this charge the girl had made against the defendant.

Q. Well, what next did you do?

A. I then later on went to George Berg and asked him if he knew anyone that he could get *to down* there with him, and if so to get a man. I got another man myself.

Q. Who did you get?

A. Ed Wolcott, to go there, and instructed Mr. Wolcott, I believe, to the effect that I expected a conversation to come off in a certain building in this town. I didn't tell him where it was, or who the people were, or anything in regard to it. But I asked him to go down there where he would overhear that conversation, and asked him to take it down in shorthand, whatever it might be.

Q. What instruction was given to Mr. Clark, if you know?

A. I am not sure that I gave Mr. Clark any instructions at all. I think the instructions to Clark were given by Mr. Berg. I am not positive about that. But I think Mr. Clark was in the office before they left, if I remember correctly.

Q. Do you know whether or not Mr. Clark knew where he was going?

A. He never expressed to me that he knew where he was going. I wouldn't swear that he didn't know where he was going to, because I don't know.

The COURT.—Q. What Mr. Clark was this?

A. Mr. Frank Clark over here at the drug-store.

(Testimony of J. H. Miller.)

Mr. ROTH.—Q. Now did you go down to the Herrington home again that evening? A. Yes, sir.

Q. What occurred the next time you went down there?

A. When I went down there the next time it was about eight-thirty or a quarter to nine, somewhere between eight and nine o'clock.

Q. One moment. When you first went down there and looked the house over, did you prepare the house at that time? A. Yes, sir.

Q. All right. Then the next time you went back there, you say it was what time?

A. I think between eight-thirty and nine o'clock.

Q. Who were with you? A. George Berg.

Q. How did you happen to go down there that time?

A. About—after eight o'clock, some time after eight, Berg came up and reported to me that no one had come to the house, as we had been led to believe someone would come—(interrupted).

(Defendant moves to strike the latter part of the answer as hearsay. Motion denied. Defendant excepts and exception is allowed.)

A. (Continuing.) And so I wanted to go down there and find out from the girl why that arrangement had not been carried out, or why the thing hadn't come off as she had told me it would come. That was my purpose of going back there.

Q. What did you find when you got there?

A. I found the girl in the house and Mr. Woolbridge.

(Testimony of J. H. Miller.)

Q. What was said at that time? [327]

A. Nothing more than I simply, when I saw him and recognized him there, I said to the girl "Where is your father," and she said, "He is not home just now. He is up town somewhere," or words to that effect, and I said, "Do you know when he will be back," and she said no she didn't know, and I said, "I will call again," and stepped out. That was all that was said.

Q. Did you address Mr. Wooldridge at that time?

A. I did not. I don't think I did, unless I said, "Good evening," or something like that.

Q. How were you dressed at the time you were in there?

A. About as I am now, but I had my fur coat and hat on.

Q. Did you have the collar up?

A. I think I did. I usually wear it that way. I wouldn't say positively that I did.

Q. Did you go back there again that night?

A. I did.

Q. Did any one go with you?

A. George Berg.

Q. What time did you get back there?

A. We went out and were gone just a few minutes, until after we saw somebody leave the house—I presumed it was Mr. Wooldridge, and then we went back.

Q. Did you have a talk with Laura at that time?

A. I did.

Q. Now, with reference to this investigation and

(Testimony of J. H. Miller.)

in line with this investigation, what was your conversation between you and Laura at that time?

Mr. MARQUAM.—We object to it as calling for a hearsay answer.

The COURT.—Now the question is directed to the conversation [328] between Miller and the witness, Laura Herrington.

Mr. ROTH.—Yes. Upon the subject now of the further investigation, continuing investigation.

(Objection overruled. Defendant excepts and exception allowed.)

A. I asked her how she accounted for—(interrupted).

Q. I don't care anything about that. I will withdraw that last question. I will ask you to state whether or not that night there was anything, any further plan made with reference to a further investigation by you.

A. No. There was not.

Q. Now, what was the next step in the investigation?

A. The next morning, or the next forenoon, I think it was sometime, George Herrington came to the office and told me—(interrupted).

(Defendant objects to any statement made by the witness George Herrington not in the presence of the defendant, as pure hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. He told me that after Berg and I had left there the last time, the night previous, that Wooldridge had come back again to the house and that he had

(Testimony of J. H. Miller.)

made a date with the little girl at Rose's bicycle shop for eight o'clock the next evening.

(Defendant moves to strike all of the answer as incompetent, irrelevant and hearsay. Objection overruled. Defendant excepts. Exception allowed.)

Q. And what did you do?

A. I went up and took a look around Rose's bicycle shop to see if there was any chance to place anybody there in a shape to overhear a conversation between those people, and I found the place where I thought such a thing could be done. [329]

Q. Just state to the jury now in detail—

A. That place was—I surveyed it from the outside—McDermott's store. I went in to McDermott and told him that there was something in connection with crime—(interrupted).

(Defendant objects to any statements made to McDermott.)

Q. Just tell what you did.

A. I then went into McDermott's place, went into his bedroom, from his bedroom through a back door into a little hallway and found that I was at a side door of Rose's bedroom. From that I concluded that that would be a good place to place witnesses to overhear any conversation that might occur in that building.

Q. All right. After that what did you do?

A. After that, then I went up and I called the deputies together, some of them, and I told them what my plan was to see that meeting and overhear that conversation. I told Frank Hall to get the

(Testimony of J. H. Miller.)

keys, if he could, or the use of Judge Pratt's office for the purpose of seeing who went in that building, and for Pete McMullen to go with him; for the two of them to stay there, see who went into the building, and if this defendant and that girl went into the building at the time that had been told me they would go there—(interrupted).

Q. What time was that?

A. That was eight o'clock in the evening. After they were sure they were in there, and if they saw any lights go out, or any way, that they were in there, for the two of them to go up close by, so as to be able to see who came [330] out of the building, and who they were.

(The defendant moves to strike all of the answer, as being a conversation between this witness and the witness Frank Hall, not in the presence of the defendant, the same being pure hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. And I told—(interrupted).

(Defendant objects to the conversation about to be related by the witness, if it was not in the presence of the defendant, as being incompetent, irrelevant and hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. I then told Deputy Berg and Deputy John Wood to take up a position by that door, a place there where a person could see through, a good place to hear, and to listen to whatever conversation came off between this defendant and this girl.

(Defendant moves to strike the answer for the

(Testimony of J. H. Miller.)

same reasons before stated. Motion denied. Defendant excepts. Exception allowed.)

A. After these men were supposed to have taken their places there, I stayed outside, walked down the street here where I supposed the girl and the father—the way they would come up, and I met them and asked the little girl if she was going up there to keep that appointment, and she said she was, and I told her, “Your conversation will be overheard, and you talk to Mr. Wooldridge about this time that you claim he had sexual intercourse with you up in that cabin.”

(Defendant interposes the same motion and the same ruling is made and exception allowed.)

A. And she said she would. And I also told her that if anything came off—(interrupted).

(Defendant moves that any further conversation or instructions not in the presence of defendant be—We object to it as incompetent, irrelevant [331] immaterial and hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. I then told her that if anything started there that was not right, or if he attempted to treat her wrong in any way, for her to simply say, “Now, you be careful,” or “Be careful.” I couldn’t say those were the exact words, but words to that effect, and then there would be some transaction occur that would cause a stop. But to hold the conversation with him.

Q. Now, up to this time, Mr. Miller, did any person besides yourself have any part in the making

(Testimony of J. H. Miller.)

of these arrangements?

Mr. MARQUAM.—Up to what time?

Mr. ROTH.—Up to the time he talked to Laura on the way up there.

A. No one, any more than the deputies I consulted with, and I think I consulted with you as to whether it was the proper thing to do, and what was the right thing to do in the case.

Q. Whose plan was this?

A. This plan was my own.

Q. Now, just carry that on. What was the next thing that occurred.

A. The next thing that occurred was, several minutes after that, when I went up there—I think really the next thing that I saw in connection with the matter was when Mr. Wooldridge, Mr. Rose and the little girl were out in front of the bath-house there, Mrs. Wilson's bath-house, and I told them all to come up to the office.

Q. Did you go into Rose's bicycle shop that night?

A. No, sir. I did not.

Q. Now, when you came into the marshal's office, what part of the office did you go into? [332]

A. Went into the private office of the marshal.

Q. Who were there? Who all were there?

A. When we first went in there I think there was just Mr. Wooldridge, Mr. Rose, and the little girl and myself.

Q. Did you have any conversation at that time?

A. We did.

Q. All right. Just state what was said at that time.

(Testimony of J. H. Miller.)

A. As near as I remember it, I asked Mr. Wooldridge what was the reason that he was meeting this little girl at night this way, and he answered me and said that she had come in and said that she wanted to hide, and the little girl said to him, "You are lying about that. I didn't say that. I didn't say I wanted to hide at all." I said to the little girl, "What was your purpose of going there to meet Mr. Wooldridge?" "Well," she said, it was to keep a date I had made with him." I said, "What was the purpose of the date?" She said, "The purpose of the date was that I promised to give him a piece." That was the words she used.

Q. What did Mr. Wooldridge say?

A. He didn't say anything, I don't believe. I don't know whether he answered or not. He might have.

Q. When Laura said that he lied about stating that she said that she went in there to hide, did Mr. Rose say anything?

A. I don't think Mr. Rose did at that time. That was about all of the conversation I had there alone with them both at the time, and I then called the other boys in.

Q. You then called who in?

A. I called the other boys in.

Q. Did I go in there at any time? [333]

A. No, sir.

Q. Did you call me that evening? A. I did.

Q. What did I tell you?

A. You told me you didn't want to have anything

(Testimony of J. H. Miller.)

to say about that at all.

Q. And I didn't go in? A. You didn't go in.

Q. Now, what else was said after the other boys went in there?

A. Well, I asked Mr. Wooldridge, I said to him, "What was you doing down at this girl's house yesterday?" He said, "I was down there trying to sell some potatoes," an answer of that kind. I don't remember his exact words. Then I said, "What were you doing down there again last night?" He said, "I wasn't down there last night." I said, "Yes, you were. You were there last night, because I am one of the two men and this is the other man standing here that walked in there when you were sitting there talking to the girl." He said, "I didn't recognize you." Then I said—(interrupted).

Q. What did he say in reference to that; what he was doing there?

A. He said something again about the potatoes, and so I said to him, I said, "After we left you got up and went out." He said, "Yes." Then I said, "We went back there again after that." and I said, "Did you go back there again after we left the second time?" He said, "No, I didn't" And I said to him, "Is everything you have said here to-night as truthful as this statement that you are making right now, [334] that you didn't go back there again after Berg and I left the second time?" He said, "Well, I did go back there, but I didn't go inside."

Q. Did you ask him what he went back for that time?

(Testimony of J. H. Miller.)

A. I don't think I did that time. I don't think I asked him.

Q. Did he say what he went back there for?

A. No. He didn't say what he went back for. I told him that was all I had to say; to go away.

Q. Did he volunteer any statement there at all at that time?

A. Not that I recollect at that time, no. No nothing further than that.

Q. Now after that, or during this time, did Mr. Rose say anything in this conversation?

A. Not that I remember of. I don't think Mr. Rose—I don't think at that time that he said anything right at that time, no. I am not sure.

Q. Did you later have a conversation with Mr. Rose? A. I did.

Q. When was that?

A. That was a few minutes after this conversation. Berg and I started to take the girl home, and when we got down here a little ways, it either come up by conversation, or we got to thinking it over, and we concluded if we wanted to get the whole truth of the case we had better question Mr. Rose before he and Mr. Wooldridge had talked together.

(Defendant objects to that and asks that it be stricken as being a conclusion of the witness and the Court strikes the latter part of the answer and directs the jury to disregard it.)

Q. What did you do?

A. I went back to the office, and I sent Pete McMullen down [335] after Mr. Rose, and he

(Testimony of J. H. Miller.)

brought him up to the office.

Q. Tell the jury just what occurred with Mr. Rose when you got into the office there.

A. After we got in the office, I asked—I started to ask Mr. Rose some questions—(interrupted).

Mr. MARQUAM.—Q. Was Mr. Wooldridge there? A. No. He was not.

(Defendant objects to this as hearsay, not being in the presence of the defendant and therefore not binding on him and as incompetent, irrelevant and immaterial. Objection overruled. Defendant excepts. Exception allowed.)

A. I took a pad of paper and asked Mr. Rose some questions. He volunteered some questions. I had the other boys come in where we were.

Q. Do you mean “Volunteered some questions,” or “statements”?

A. Statements. He volunteered some and I asked him some in connection with it, and Mr. Berg spoke to him about some parts of his statement as to certain conversations that had taken place, and I wrote that all down. As I wrote it, each sentence at a time, a few words at a time, I read them back to him, repeated it, and asked him if that was what he wanted to say, and he said it was. And when I got the whole thing written down, I asked him if he had any objection to swearing to it that it was true, and he said it was true and he would swear to it. And I handed him the paper, and I said, “You had better read it.” He said he didn’t have his glasses with him. So I took the paper and handed it to Deputy Frank Hall

(Testimony of J. H. Miller.)

and told him to read it to Rose, and he read the paper to Rose, and Rose signed it and swore to it. And the boys in the office—(interrupted). [336]

Q. After Frank Hall had read it all over to him, what did Rose say about it?

A. He said that was substantially what he wanted to say; that that was the truth. I cautioned him again and again; “don’t tell anything but what is so, but what is true. That is all I want to put down here. That is all I want to know,” and he said, “That is just the truth of it.”

Q. Were there any threats of any kind made to him there? A. None whatever.

Mr. MARQUAM.—I move that the last two answers—I think there was a question in between. The main part of the testimony I want to move to strike, was the answer and question previous to this. I move to strike as incompetent, irrelevant, immaterial, hearsay, a conversation taking place upon the part of their own witness Rose, which he has testified to but which the defendant has not testified to, making it purely and simply hearsay.

(Motion denied. Defendant excepts. Exception allowed.)

Mr. ROTH.—Q. Mr. Miller, I now show you Plaintiff’s Exhibit No. 1 and ask you to state whether or not—ask you to state whose handwriting that is in.

A. That I believe to be in my own handwriting.

Q. Is that the statement you have been referring to now in your testimony? A. Yes, sir.

Q. As having been given by Mr. Rose?

(Testimony of J. H. Miller.)

A. Yes, sir. That is the same thing. [337]

Q. Now in that conversation I will ask you to state whether or not Mr. Rose said anything upon the subject of whether or not Laura Herrington said that anybody was following her or that she came in to hide.

(Defendant objects as incompetent, irrelevant and immaterial, and calling for hearsay evidence. Objection overruled. Defendant excepts and exception allowed.)

A. He said—I asked him what the little girl said, if she said that someone was after her, if she wanted to hide in there. He said, “I didn’t hear her say anything like that.” He said, “She and Wooldridge were talking over by the stove, and I didn’t hear what they said.” That is what he told me.

Mr. ROTH.—You may cross-examine the witness.

Cross-examination.

Mr. MARQUAM.—Just a question or two before we adjourn.

The COURT—Unless you are going to complete your cross-examination—(interrupted).

Mr. MARQUAM.—It won’t be possible to complete it to-night.

The COURT.—I do not think that it would be advisable to *to* start in with it.

Mr. MARQUAM.—Very well.

(Trial continued until ten o’clock to-morrow morning, and the jury, after being admonished as usual, withdraw in charge of the bailiffs.)

March 11, 1916, 10 o’clock A. M. The defendant

(Testimony of J. H. Miller.)

and his attorneys and the District Attorney and the jury are present in court and trial resumed. [338]

J. H. MILLER, resumes his testimony.

Cross-examination.

By Mr. MARQUAM.—Q. You are chief deputy United States marshal? A. Yes, sir.

Q. How long have you held that position?

A. Since the first of last May.

Q. What has been your previous experience as an officer, Mr. Miller?

A. None whatever, sir. That is before that I was office deputy since July first, 1915.

Q. How long have you been in the marshal's office?

A. Since July 1, 1913.

Q. And as I understand you, prior to that time you had had no experience in an official capacity?

A. No, sir.

Q. What has been your business generally since you have been in Alaska?

A. I have been in the mercantile business, dairy business and butcher business.

Q. Have you any interest or feeling in this matter so far as the defendant is concerned?

A. I think not, Mr. Marquam, further than my official duty.

Q. Let me ask you if it is true that during the last year you went to Mr. Riggs who is one of the railroad commissioners and made any effort to have Mr. Wooldridge removed from the employ of the Government.

(Plaintiff objects, as irrelevant, incompetent and immaterial, and not cross-examination. Mr. Mar-

(Testimony of J. H. Miller.)

quam states it is to show interest, feeling, and the attitude of the witness toward the defendant. Objection overruled.) [339]

Q. Is that true?

A. I don't think that I ever went to Mr. Riggs and made any effort to have Mr. Wooldridge removed, or kept from being hired, or anything of that kind.

Q. You say you don't think you did?

A. I am sure I didn't.

Q. You would remember it if you did?

A. Yes, sir.

Q. Then you will say positively now that you never did?

A. I will say positively. I had better answer your question, I think, as you put it. I think you are mistaken, and I have no desire to say anything except that you have got things a little twisted.

Q. I don't know. I want to find out.

A. You have some information, but your information is wrong. I want to be perfectly fair. I think you said it was to Mr. Riggs I went in regard to Mr. Wooldridge. It was to Mr. Rigg's assistant that I went in regard to Mr. Wooldridge.

Q. What was the purpose of that, to have him removed from the position?

A. Yes, and I think I ought to have the right to further answer that question.

Q. When was that?

A. I don't remember, but I think it was last spring.

Q. Do you have any personal knowledge of your employer, Mr. Erwin, having made the same effort?

(Testimony of J. H. Miller.)

A. That was upon the request of my employer, Mr. Erwin.

Q. Erwin requested you to do that? A. Yes.

Q. When did you start into the investigation of this case. [340] against Mr. Wooldridge?

A. About the time that I told you. I think the first investigation was on the night of the fourteenth of February.

Q. Fourteenth of February, 1916.

A. 1916, yes.

Q. At whose suggestion did you start this investigation, if anybody's?

A. It was not suggested to me by anybody. I practically started it myself. That had come up out of the conversation I had with Laura Herrington. That is how it came into my mind.

Q. Did you at that time, or prior to that time, consult with Mr. Roth?

A. No, sir, not in connection with this case.

Q. You say you did not?

A. No. Not in connection with this case. The whole thing developed right there in Mr. Roth's office when the little girl was there.

Q. Then that did start in Roth's office?

A. Yes. Nothing previous to that had ever been said.

Q. I presume you talked with George Herrington, consulted with him considerable?

A. I didn't consult with George Herrington.

Q. Did he consult with you?

A. No, sir. He followed the instructions that I

(Testimony of J. H. Miller.)

gave him; that if the little girl told him anything, to tell me, to come and tell it to me.

Q. Was this investigation which, and this plan of action which [341] you yourself and the other deputies entered into at the Herrington house and up at Rose's shop—what was the initial purpose of that?

A. The initial purpose of that, Mr. Marquam, was to prove whether or not, by the conversation that ensued between Wooldridge and the girl, if that crime that she alleged against him had actually happened up in that cabin.

Q. It was for the purpose of securing evidence to help in his conviction of that offense that had been committed some years or more before?

A. It was for the purpose of proving whether that statement of her's was the truth or not.

Q. Isn't it a fact, Mr. Miller, that it was for the purpose of gaining some more evidence that would aid in his conviction.

A. I can give you an exact illustration if you want to as to just what purpose was, so there can be no doubt about it.

Q. Answer my question.

A. I can't answer that question in that way fairly to both sides. It is whatever developed. If it developed something that would aid the prosecution, well and good; if it developed something that would aid the defendant, well and good. It made no difference to me.

Q. You as an officer investigating that matter were not satisfied. I take it, that you had sufficient evi-

(Testimony of J. H. Miller.)

dence to justify a prosecution against Mr. Wooldridge up to that time.

A. Not on the girl's lone statement.

Q. Or on anybody else's statement at that time?

A. I hadn't investigated anybody else at that time.

[342]

Q. With regard to the offense in question here wherein he is charged with rape? A. Yes, sir.

Q. You had made somewhat of an investigation, had you not, as to whether there was any other evidence in existence at that time that would tend to corroborate her bare statement?

A. The girl had made—(interrupted).

Q. Answer that.

A. No. Not that I remember of, that I had investigated at that time.

Q. And it was for the purpose of determining the need of other testimony or other evidence, that you started this plan of action?

A. It was this: To get evidence in the case, real evidence as to the truth or falsity of her charge.

Q. Yes? A. Yes, sir.

Q. And was George Herrington in consultation during this time with Mr. Roth or yourself?

A. He never was in consultation with me, not consultation. No, sir.

Q. When I say consultation, I mean talking together.

A. Yes. He came to me and reported these things to me as I have stated.

Q. In this particular investigation was he to re-

(Testimony of J. H. Miller.)

port to you? Was there an understanding between you and Mr. Roth that Herrington was to report to you, or was he reporting to Mr. Roth, and then he, Mr. Roth, consulting with you as to the plan of action?

A. No, sir. Mr. Roth didn't consult with me as to the plan of [343] action in securing this evidence. That was my own plan.

Q. As to the details of it?

A. As to what was the proper thing for me to do to keep within the law and do the right thing as far as the law was concerned, I consulted with Mr. Roth, as to how far I should go in a thing of this kind in investigating.

Q. In that respect you followed Mr. Roth's advise? A. Yes, sir.

Q. But you mean to say that as to the details in working out this scheme, those were your own?

A. Those were my own. That was my way of trying to determine the truth of the matter.

Q. What I was getting at was this: With regard to Mr. Herrington himself, undoubtedly you relied upon Mr. Herrington for help in this matter.

A. Not any more than to bring me—I will explain the matter, why I used Herrington, if you want me to.

Q. I want you to answer the question. I want to be fair with you. A. I will be fair with you.

Q. But I want you to answer the question. You or somebody did have occasion to talk or consult with Herrington? A. Not consult.

(Testimony of J. H. Miller.)

Q. What do you mean. Talk with him?

A. If I understand "consult" it means that if you and I were to consult together on a plan of action, if I understand the word "consult."

Q. I mean talk with him.

A. Yes. I talked with him, if that is what you mean. I told [344] him or gave him instructions what to do.

Q. Did you attend to all that or did Mr. Roth attend to any part of it?

A. He never attended to anything that I remember. If he did it was something that didn't come within my knowledge.

Q. When did George Herrington first tell you about having had a talk with Wooldridge with regard to some potatoes that Wooldridge was to deliver or sell?

A. I think it was before the fourteenth. If I remember I think it was the eleventh or the twelfth that he said Wooldridge said something to him about potatoes.

Q. Wasn't it before that?

A. I don't think it was. I won't be positive as to a day or two there, for I am not sure.

Q. Now, the fourteenth, you fix as the day which—what do you identify the fourteenth by, by what fact that appears in this case?

A. Valentine's Day.

Q. With regard to this case?

A. The meeting at the house, at the Herrington house.

(Testimony of J. H. Miller.)

Q. In the evening? A. Yes, sir.

Q. The time that these people were upstairs?

A. Yes, sir.

Q. You identify that as the fourteenth?

A. Yes, sir.

Q. Now, as a matter of fact, didn't you, didn't your office and your deputies have in mind the laying of this scheme down [345] there—call it whatever you want—(interrupted).

A. Any name you like.

Q. —sometime before that between—somewhere between five and ten days before? A. No, sir.

Q. Did you ever have a talk with Mr. Berg in which this matter was outlined or at least *subjected* so that he knew that there was a proposition on to get evidence against Wooldridge somewhere between five and ten days before that meeting occurred down there? A. No, sir.

Q. If Mr. Berg made that statement, he is mistaken, is he? A. He certainly is.

Q. How did Herrington come to give you this information about Wooldridge coming to the house or intending to come to the house on this potato proposition? Did he come to you and tell you about that? A. Yes.

Q. And that is the first information you had of it?

A. That is the first information I had of it.

Q. What did you say to George Herrington, Mr. Miller, when that occurred?

A. I don't know as to what I might have said to him. I probably said that if—(interrupted).

(Testimony of J. H. Miller.)

Q. Just a minute. If you don't remember, don't guess at it.

A. I don't remember just what I said.

Q. Didn't you tell him, in substance at least to get his daughter Laura to make a date with Wooldridge? A. No, sir.

Q. You didn't? [346]

A. That is a thing that I have always avoided.

Q. Well, did he suggest it? A. No, sir.

Q. He didn't?

A. No, sir. Not the way you put it.

Q. Not the way I put it. Wasn't that your intention, and wasn't that George Herrington's intention, and wasn't that Mr. Roth's intention, as you understood it, that if you could get Laura Herrington alone, when Wooldridge came there, to encourage her to do it? A. No, sir.

Q. That is not it?

A. Not in that way. You put it wrong. I can answer that question.

Q. Well, that is an answer. You say that you did not do that? A. No.

Q. When and through whom did you first receive any information that a plan had been laid or consummated whereby these two people were to be found alone there or would be alone?

A. Through George Herrington.

Q. He told you about it? A. Yes, sir.

Q. And you then immediately laid your wires for the purpose of catching him?

A. Not immediately. No. I went down that

(Testimony of J. H. Miller.)

evening at five o'clock or such a matter.

Q. In plenty of time? [347]

A. In plenty of time. Yes.

Q. What did you do?

A. You want to know exactly what was done, don't you?

Q. Yes. The other witnesses have attempted to describe it, but you are the one that know more about it, and I would like to have your statement.

A. It will become necessary for me to tell you something that I would rather wouldn't become public property.

Q. The reason I ask you this is because this had all been developed before this jury.

A. In our office we have a dictaphone, which is used for the purpose of getting conversation between people, and that conversation can be transmitted at least—I don't know how far, but we have a wire fifty feet long, and we can hear that far any conversation transmitted by that instrument. I went to that house and in the main front-room I put the little instrument that takes the noises, the sounds. I run the wire and secreted that so it couldn't be seen—secreted that so it couldn't be seen and run the wire back to where the receiver is, putting the receiver on a table. And that was all the work that we did there in the house at that time.

Q. That was installed in the evening about seven or seven-thirty?

A. No. That was installed about five o'clock in the evening, somewhere near there.

(Testimony of J. H. Miller.)

Q. Who was there and saw it installed?

A. Mr. Berg was there, and Laura, and her father, I think.

Q. George Herrington? [348] A. Yes.

Q. And Mrs. Herrington?

A. I think Mrs. Herrington was there.

Q. They all saw and knew what it was?

A. I don't know. I didn't explain to Mrs. Herrington. Mrs. Herrington was full of whisky at the time. That is the truth of the matter.

Q. Full of whisky?

A. She had plenty aboard. Yes, sir.

Q. Is that the only time you ever saw Mrs. Herrington full of whisky?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts. Exception allowed.)

Q. Isn't it a fact that you have—I want to put this question direct, inasmuch as the witness has answered that question, for the purpose of the record. Isn't it a fact that you have personal knowledge, or know at least, that Mrs. Herrington is drunk, or at least gets whisky and drinks it whenever she can get hold of it?

(Plaintiff objects for the same reasons last stated. Objection sustained. Defendant excepts. Exception allowed.)

Q. What instructions did you give Mr. Herrington and Mrs. Herrington and the girl?

A. I gave them no instructions any more than that before the time that this meeting was to take

(Testimony of J. H. Miller.)

place they should be away from there.

Q. All of them except Laura?

A. All of them except Laura. Yes.

Q. You must have explained to Mr. Herrington at least, whether [349] you did to Mrs. Herrington or not, why you wanted them away.

A. Yes, sir.

Q. And he agreed to see that those conditions were observed? A. Yes, sir.

Q. Were you down there when these people that went upstairs came there? A. No, sir.

Q. Did you direct these people to go there?

A. I asked Mr. Wolcott to go there and report whatever he could hear over that dictaphone.

Q. Who had Mr. Clark go there?

A. Mr. Berg.

Q. By your permission or direction?

A. I asked Mr. Berg if he knew someone who was a thoroughly reliable good citizen that he could take there with him whose word wouldn't be doubted.

Q. You didn't talk with Mr. Clark?

A. No. I think Mr. Clark came in the office, Mr. Clark and Mr. Wolcott, just before they started.

Q. You knew that he was going to be there?

A. Yes, sir.

Q. What were your instructions to Laura Herrington, if any?

A. My instruction to Laura Herrington was to talk with Mr. Wooldridge regarding the time that she claimed he had sexual intercourse with her in that cabin up by his home, to talk with him gen-

(Testimony of J. H. Miller.)

erally about it, and I explained to the little girl that that was for the purpose of proving whether it ever happened or didn't happen. I said "When [350] you talk to Mr. Wooldridge, you talk to him about that time, and his answers to you will be proof as to whether you are telling the truth or telling a lie about it."

Q. You told her especially to talk about—assuming the truth of that matter, to talk about sometime she had claimed to have had sexual intercourse with the defendant. That is, the evidence of this first charge in the indictment?

A. Yes, sir.

Q. That is what you referred to? A. Yes.

Q. You told her to talk loud?

A. I told her to speak in a good ordinary tone.

Q. Did you explain to her that this dictaphone was there? A. Yes.

Q. And she must talk reasonably loud so it would be recorded?

A. I don't think so. The dictaphone is just about as sensitive as the ear, or even a little more so.

Q. All right.

A. Yes. I think a trifle more so.

Q. Take that dictaphone and put it in a desk, in a drawer, and you could hear an ordinary conversation?

A. Yes. I could hang it up in that room out there (indicating) and I think it would record everything you and I are saying now.

Q. By record, you don't intend to give the jury

(Testimony of J. H. Miller.)

the idea that it records on a record?

A. No. It transmits, takes the sound and transmits it.

Q. So that the person at the other end, who has this cap over [351] his ears can hear it the same as a telephone?

A. Just the same as if they were sitting in the room.

Q. It is only a telephone that is much more powerful than the ordinary telephone?

A. As I understand it, I believe that is what it is.

Q. Laura Herrington knew that these men were upstairs and knew the purpose for which they were there? A. Yes, sir.

Q. Well, you were informed later on that this plan had failed, were you not?

A. Well, I was informed—(interrupted).

Q. Nobody came?

A. I was informed that nobody came at that time.

Q. So you went up there? A. Yes.

Q. You and Berg? A. Yes.

Q. What did you say when these men came down to your office and reported that they had stayed there three-quarters of an hour, or an hour, and nobody came?

A. There was nobody came to the office except Mr. Berg, I believe.

Q. What did you say to Mr. Berg?

A. I asked him "What is the matter down there," and he said, "Well, Wooldridge didn't come."

(Testimony of J. H. Miller.)

Q. Let me ask you if you said this to Berg: "We will just go up there and see, and see if that girl is lying to us."

A. I did, I think. Yes. That is one of the first things that flashed through my mind.

Q. So you went up there and knocked on the door, expecting [352] to have a talk with her, and you saw Wooldridge in there then, sitting there?

A. Yes.

Q. Was he sitting down?

A. As I opened the door, he was sitting like this (indicating) to my left in a chair.

Q. How was he dressed?

A. I don't recollect, but I—(interrupted).

Q. Did he have his fur coat on?

A. I think he had an overcoat on. I wouldn't say it was a fur coat.

Q. Did he have his hat in his hand?

A. I don't know. I just saw him at a glance like that, and it occurred to me that he had come there, and I didn't care to have him recognize me at that time.

Q. So you handled yourself by the way you faced, kept your face away from him, so as to prevent him from recognizing you?

A. I spoke to him, I think, said to him "Good evening."

Q. Didn't you disguise your voice?

A. No. I didn't disguise my voice. I said to the little girl "Is your father in"? or words to that effect.

(Testimony of J. H. Miller.)

Q. You just said you didn't want him to know it was you.

A. No, I didn't want him to know it was me.

Q. So you must have done whatever occurred to you at that time to prevent him from recognizing you?

A. Yes. Although I had known Wooldridge for a long time and he worked for me once.

Q. There was light on in there. [353]

A. Yes.

Q. How was that house lighted?

A. There were lamps in there.

Q. Electric light? A. No. Lamps, I think.

Q. Tell the jury whether, under the circumstances as surrounding yourself, with your coat collar turned up, as I understood from Berg, it was a difficult thing for a man to recognize you.

A. I think it was, on account of the way I stood when speaking to the little girl. She was in front of me here, and Wooldridge was here (indicating). So I naturally wouldn't be in view, and if my coat collar was turned up he probably wouldn't see my face.

Q. Did you have a talk with George Herrington that night?

A. Not that night. I had talked with him during the evening when I was installing the dictaphone.

Q. I mean after that. A. No, sir.

Q. When did you see him again?

A. The next day some time.

Q. What time? A. I don't remember.

(Testimony of J. H. Miller.)

Q. When did you see Laura Herrington again?

A. I didn't see her again until we came back to the house. We left after I had that conversation with her when Wooldridge was there. We left and went away, and I saw him leave shortly after we left, then I turned around and came back and had a talk with her. [354]

Q. How long did you stay there?

A. I stayed about ten minutes.

Q. You saw Wooldridge leave or Herrington leave?

A. Wooldridge, after we had the conversation.

The COURT.—The questions were directed to Mr. Herrington.

Mr. MARQUAM.—I was directing my questions, Mr. Miller, particularly to when you saw the girl.

A. Yes. It was when I went back shortly after Mr. Wooldridge left.

Q. And you didn't see Mr. Herrington then?

A. No, sir.

Q. What time was it when you went back there?

A. The last time?

Q. Yes. The last time?

A. I don't know. I think it was about half-past eight when we left the office, or a little later than that, and we went down there and went in and this conversation ensued; then, after we went out, we went down the street a block, and it was not but a short time until Wooldridge came out and we went back in.

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

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VOLUME II.
(Pages 353 to 668, Inclusive.)

Upon Writ of Error to the United States District Court
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Filed

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(Testimony of J. H. Miller.)

Q. Didn't he follow you out almost immediately?

A. No. I think we were nearly to the end of the block before he came out.

Q. It was not more than a minute?

A. No. It was not any length of time. I would say it was a minute or two or three. I wouldn't be able to say that.

Q. Then you went back again?

A. Then we went back again.

Q. What time was that? [355]

A. I would imagine it was somewhere between a quarter to nine and nine o'clock. I can't say exactly.

Q. Then you saw George Herrington the next day?

A. Yes.

Q. And you had a talk with him about this plan you were going to lay in Rose's shop?

A. Yes, sir.

Q. He knew all about that?

A. No. He knew nothing of it.

Q. Didn't you tell him about it?

A. No, because I didn't know anything about it at that time.

Q. Maybe I misunderstood you. A. Yes.

Q. You say you saw George Herrington the next morning? A. Yes.

Q. Now, I intended to ask you, whether you understood it that way, whether you had a talk with him when you saw him the next day, or the next morning, about this arrangement that you had made or were going to make up at Rose's bicycle shop.

(Testimony of J. H. Miller.)

A. No. He came to me and told me—(interrupted).

Q. Never mind what he told you. You had a conversation with him?

A. I had a conversation. He reported to me in regard to the bicycle shop, that is, he gave me a report in regard to that.

Q. You got that from him?

A. I got that from him.

Q. Without quoting what he said. That is not proper testimony. [356] Then you got your information upon which you based this—what you did afterwards at the bicycle shop, from George Her-
rington. A. That is it exactly.

Q. Did you then tell him your plan of action?

A. No, sir. Because I didn't have any.

Q. You developed that later? A. Yes.

Q. Did you develop that alone, or did you develop that in consultation with Mr. Roth?

A. Absolutely alone.

Q. When was the first time that Mr. Roth knew anything about that? A. Well, I don't know.

Q. Was that before you went up there?

A. I don't know whether I reported it to him or not. To tell you the truth, I couldn't say, and wouldn't say.

Q. I understood you to say awhile ago that you consulted Mr. Roth upon questions of policy and whether or not you were going too far or if it was right that you should do these things. A. Yes.

Q. Did you consult him in regard to whether it

(Testimony of J. H. Miller.)

was all right for you to do what you did down at the Herrington house? A. Yes.

Q. Wouldn't you be likely to consult him about what you proposed to do at the bicycle shop as to whether it was legitimate and proper?

A. The action to be taken was exactly the same.
[357]

Q. And his first advice was sufficient to justify you. A. To cover all the ground, yes.

Q. And assuming that it was, you then developed in your own mind the plan of action to be adopted at the bicycle shop? A. Yes.

Q. What time of day was it that you developed the plan of action to be adopted at the bicycle shop?

A. Well, it was along during the afternoon sometime. I don't know just when. I went up and looked all around there and I saw three different places there from which a person could get near to where I wanted to get.

Q. What places were they?

A. Bill McPhee's place, Mrs Wilson's bath-house, and McDermott's store.

Q. That you could get through?

A. Where I could get near to Rose's building, near enough to hear what was going on in there, or see.

Q. Were you back through each of those places?

A. No, sir.

Q. You just went through McDermott's?

A. Yes. That is the only place I did go through.

Q. Did you tell McDermott what you were after?

A. No. Not in that way. I told McDermott that

(Testimony of J. H. Miller.)

there was a matter coming off there in connection with a reported crime, and that I wanted to use his building for the purpose of determining whether it was true or not, or words to that effect as near as I can remember. That is what I tried to imply. I didn't tell him who it was.

Q. Nor what it was? [358]

A. Nor what it was.

Q. Nor what kind of a crime it was?

A. No, sir. I don't think I did.

Q. And it was upon that representation that you got permission from Mr. McDermott to pass through his store?

A. Yes. Mr. McDermott said, "If there is anything I can do to ferret out anything, the truth of it, or anything of that kind, you can always use my place."

Q. You went back in that hallway and made an examination yourself to see what the situation was?

A. Yes, sir.

Q. As far as its adaptability for the purpose?

A. Yes.

Q. Did you cut through the paper or cloth at that time? A. No, sir.

Q. Were you looking for a place, Mr. Miller, to place this dictaphone?

A. Well, I had that in view. I had that in mind.

Q. If you could have found a suitable place you would have placed this dictaphone there?

A. Yes.

Q. But I take it that the situation from your

(Testimony of J. H. Miller.)

standpoint was just as favorable for listening as it was for—that is, without the aid of this dictaphone, as it was with it.

A. Yes. I didn't figure that I could get the receiver or receiving part of the machine that takes the sound any closer to the people than the person's ear would be.

Q. Didn't this idea occur to you: that if you were going to go into a scheme of that kind, that if you had this [359] dictaphone with a stenographer at the end of it, a man who is honest and would report what *you* heard, that you would have what was heard there and there wouldn't be any guesswork about it? Didn't that occur to you?

A. I don't know as I understand that question as you put it to me.

Q. I will make it plain. You understand the fallibility of the human mind as far as memory is concerned, don't you? A. Yes.

Q. And the ordinary man might listen to-day to a conversation and the best that he could do would be to give his ideas as to what was said. A good many men are that way.

A. But in a thing of this kind there would only be a vital part that would settle the thing one way or the other.

Q. You understand that even a man listening to a conversation in which there is one vital question, that it is very difficult and almost impossible for him to repeat the language and the words that have been used by the parties. Don't you know that?

(Testimony of J. H. Miller.)

A. Yes, sir.

Q. Didn't it occur to you that if you were going to involve a man with evidence taken in that way, if that was a legitimate way to get at it, wouldn't it be better to get his exact words, as you attempted to do with Mr. Wolcott in this other house, than to rely upon one of your deputies to remember?

A. Yes, if it had been possible to put the machine in there.

Q. Wasn't it possible? [360]

A. There was no way to get it on the inside without being discovered.

Q. Don't you know that that machine, if you had hung it up facing that point, that opening, that Mr. Berg cut in that wall where there is an inch space between the boards, as he claims—and I guess you will claim if you examine it—with paper and cloth on the other side, that that instrument there would have received every sound of the voice just as plain as if it had been right in the room?

A. No, I don't think so.

Q. Haven't you tested that out to know that that fact is true?

A. No, I don't know that that is true. I have tested it out at keyholes in the office, and it doesn't work so good.

Q. You just told the jury in answer to my question that you could put it in a drawer here of one of these desks and close the drawer, and hear our conversation out in this courtroom.

A. You must have misunderstood me if you un-

(Testimony of J. H. Miller.)

derstood that I said you could put it in a desk and close the drawer and you could hear.

Q. What did you say?

A. I said you could put it under a table, or put it in a drawer, but if you shut the sound away from that instrument it won't receive the sound any more than your ear will if you shut the sound away from your ear.

Q. Don't you know that that instrument can be placed at a hole cut in this wall here and that receiver put in there and the cloth and paper pasted over it again, and that you could hear a sound in this room almost as plain as if it was right out in the room? [361]

A. You bet it won't. You try it. I will give you a demonstration of it.

The COURT.—I think you gentlemen will have to get together and try it out.

A. Mr. Marquam and I have tried it out and I am willing to try the machine out again.

Q. I never used it for a purpose of this kind.

A. Yes it was, Mr. Marquam.

Q. Isn't it a fact that an opening through which a person could look and see what was going on in the room and hear what was said in that room, if that transmitting part of that dictaphone was placed there over that you could hear just as well as you could hear with your ear?

A. Yes, I believe you could if you don't keep the sound away from it.

(Testimony of J. H. Miller.)

Q. That condition existed there when Mr. Berg was there.

A. He found a place there, I think, Mr. Berg opened up a place so he could hear, but there was no place opened up like that when I was there.

Q. Well, what I am getting at now is, the conditions were such that it was possible for the use of that dictaphone. A. Yes, it was possible.

Q. When Mr. Berg came back to you after having listened to what went on in that room, what did he tell you about any conversation with regard to the case?

A. Why, Mr. Berg didn't report to me. When we came up, all of us, to the office, got up to the office, and I was questioning Mr. Rose, Mr. Berg stood there and said to him he said—well, I asked him, "Is there anything more you [362] remember, any more of this conversation," and he would say, "Well, I don't know as there was anything more," or something like that, and Mr. Berg would say to him "What was the conversation that you and Mr. Wooldridge had about the key hanging upon the wall."

Q. That is what I asked you about. I am asking you what Mr. Berg told you about what he himself heard.

A. He told me he had heard a lot of talk that went on there. He might have said, "I heard a lot of talk that went on there," and I think he did.

Q. With regard to any conversation between Rose and Wooldridge about keys, what did Berg say he

(Testimony of J. H. Miller.)

heard or didn't hear?

A. I don't recall what he might have said.

Q. You don't?

A. I don't recall any more than I know that he did at some time tell me about hearing them talking about the key and about other things.

Q. Just think, if you can, back to the time that Mr. Berg first talked to you and you talked with Mr. Berg, whenever that was, on the question of what the conversation between Wooldridge and Mr. Rose was in regard to keys, and what he told you.

A. I think he said something to me as we started to take Laura Herrington home. I think Mr. Berg said, "You want to get hold of Rose and hear what he has got to say, because I heard a lot of conversation there."

Q. Do you mean a lot of conversation about a key or keys, or a lot of general conversation?

A. A lot of general conversation. I can't recall just what [363] he said.

Q. To refresh your memory, didn't you tell me, Mr. Miller, some time not long ago, before I was ever connected with this case and just casually discussing the matter, that Mr. Berg didn't hear anything about the key; that he heard the word "key" mentioned, and that when Mr. Rose was down in that shop, or down in your office, and when you were questioning him and cross-questioning him, that Berg made him think from what he said that he had heard something said about the keys, and insisted upon the fact that Mr. Rose had talked about the

(Testimony of J. H. Miller.)

key? Do you remember that?

A. No. That is not the conversation.

Q. Repeat to the jury what the conversation was that you had with me.

A. As I remember, you were talking with me about this matter.

Q. It was just a casual conversation?

A. It was a conversation in which you said you were not going to enter into this case. That was the truth of the matter; that you had no intention of entering into this case, and you and I talked as we had many and many times, and you asked me something in regard to the conversation.

Q. About when was that? Fix the time.

A. I don't remember just when it was.

Q. That was about the time the indictment was returned in this case? A. Yes.

Q. And you asked me if I was going to be in this case? A. Yes. [364]

Q. And I told you that I had no idea that I would.

A. Yes. We talked and I told you Mr. Berg didn't hear everything in detail that was said between them but that he did hear enough to call Rose's attention to conversations that happened and Rose admitted that he had had the conversation and consequently came out and told it.

Q. That is exactly it?

A. That is what I told you.

Q. And as far as the keys are concerned, we heard the word "keys" mentioned, but couldn't tell what was said. A. No.

(Testimony of J. H. Miller.)

Q. But when Mr. Rose was there, his attitude and conduct towards Mr. Rose was to impress him that he *had about* the keys. Is that true?

A. I don't remember as to just what Mr. Berg said in regard to those keys. From what Mr. Berg told me, and what I got, he didn't hear all this conversation in detail and he didn't get every word of it that was said, didn't overhear it all; some parts of it he did, and some parts he didn't, but he did hear enough—(interrupted).

Q. You are getting off. I am talking about no other part of the conversation—(interrupted).

A. You are talking—(interrupted).

Q. —except about this key.

A. —about what I told you.

Q. We have had Berg on the stand. But I want your version of it, as to what Berg told you at any time as to what he heard Rose or Wooldridge say about any key.

A. I am not sure as to what Mr. Berg reported. I know he [365] talked about the keys, and about that key, about Mr. Rose saying that that was the key to the front door.

Q. That he had heard that?

A. As I recollect it. Now, I won't be—I don't want to make statements here and I am not going to make statements here that I am not absolutely sure of. I know at least here is something that may fix it better. It was in regard to that statement that Rose signed—(interrupted).

Q. I don't want anything about that, because I

(Testimony of J. H. Miller.)

never did talk with you about that, and I am not asking you about that. I want to close this key matter up so we will know where we are at.

A. All right.

Q. Let me ask you the question, and you can answer it yes or no if you can. Will you state whether or not about the time this indictment was returned, on one occasion when you and I were talking casually about the matter, that you told me that Mr. Berg had reported to you—I don't mean report—or talked to you about this matter that had come off in that place and told you that he heard while he was listening there through the partition the word "key" mentioned or spoken of but he couldn't tell what was said, and that when Mr. Rose was down in the office and he was being questioned and cross-questioned about it, Mr. Berg assumed the attitude and by his conduct impressed Rose that he had heard everything that was said, and tried to get him to say something more than Mr. Berg had heard. Isn't that true in substance?

A. No. [366]

Q. Of what you told me?

A. Not as to the key. You put the question in such a way that it is very hard to answer, and to answer it truthfully.

Q. You have the privilege to explain it. I am willing for you to explain if you will confine your explanation to this question of the keys, so we won't get the jury mixed up on it.

A. I don't remember just what Mr. Berg reported

(Testimony of J. H. Miller.)

to me about the key. I know the key was mentioned, I know of that. I know the key was mentioned all through the conversation, but it didn't seem to me to be as important as some of the other points that were mentioned. But I told you, or intended to impress or to convey the information to you, that Mr. Berg had not heard that conversation in detail, but the things that he had heard made Mr. Rose believe that the conversation between him and Wooldridge had been overheard, and he probably thought it had been overheard in detail, and the result of it was that he came through and told the truth of the whole matter.

Q. Why do you say "the truth of the whole matter" if you don't know what the truth was from his statement?

A. You are asking me what I said to you, and that is what I said to you.

Q. I asked you if you would please confine your testimony to the question of the key and you are insisting on going outside of it, so we will drop that matter. Mr. Miller, when you had Mr. Rose in your office, Mr. Berg on a number of occasions challenged the truth of his [367] statements and said "Now, you are lying," did he not? A. No, sir.

Q. He didn't?

A. Rose kept saying he didn't remember. He would say something and "I don't remember any more," and Mr. Berg would say to him "Don't you remember," or "do you remember that a conversation about"—such and such, "What was that conversa-

(Testimony of J. H. Miller.)

tion. Now," he would say "tell the truth."

Q. What was Mr. Berg's attitude?

A. It was just the attitude of a man interested and trying to get a man to tell the truth.

Q. Was it vigorous, or calm as you sit there on the stand now?

A. It was not—I couldn't say that it was any more vigorous than just simply a man will make a statement.

Q. Have you had much experience with Mr. Berg's method in dealing with men?

A. No. Mr. Berg and I have had no work together, done no work together.

Q. You know as a matter of fact that Mr. Berg's usual method, the method he employed in this instance, when he is sweating a man and trying to get something out of him, is severe and vigorous?

A. I don't know.

Q. And insistent?

A. I never saw him sweat anybody.

Q. You were sweating Rose, weren't you?

A. Why, no.

Q. I suppose Mr. Rose was there just as calm as you are sitting there now, and you are just as calm as Mr. Berg was, just [368] as calm?

A. I was calm. I don't think Mr. Rose was very calm as far as that is concerned.

Q. Was he nervous?

A. He didn't appear to be entirely at his ease.

Q. Did he seem to be afraid? A. No.

Q. Describe what that man's condition was.

(Testimony of J. H. Miller.)

A. As I would say a man not entirely in the same condition of mind that he would be in if he was repairing a bicycle or something like that.

Q. Did he appear to be worried?

A. Yes. He appeared to be. I will tell you: He appeared to me to be a man that didn't want to tell everything he knew.

Q. Afraid, was he? A. No.

Q. Did he have the appearance and manner of a man who had something to hide?

A. Well, yes. He didn't seem to want to remember these things that had happened there.

Q. Nervous?

A. No. I can't say that he was nervous.

Q. He was not nervous?

A. I don't say that he was not nervous, but I say he didn't have the appearance of being nervous.

Q. Isn't it true that when he came in there he was not a normal man. By that I mean a man in control of all his faculties? [369]

A. That is what I am saying. I don't think he was entirely at his ease.

Q. You don't know what was the cause of it?

A. No.

Q. You were in the bicycle-shop, were you not, that evening? A. No, sir. I never was.

Q. That evening? A. No, sir.

Q. About the time that the first deputies came in the front door, were you not there a few minutes after? A. No. Not in the bicycle-shop.

Q. Near the front door?

(Testimony of J. H. Miller.)

A. By Wilson's bath-house. I think that was as near as I got to it.

Q. You have explained about this hallway and the examination that you had made. You instructed whom to place themselves there, Berg and Wood? A. Berg and Wood.

Q. And what other deputies did you have?

A. Frank Hall and Pete McMullen over in Judge Pratt's office.

Q. How did you get in there?

A. Frank Hall got the key I think from Judge Pratt or Harry Pratt.

Q. From Judge Pratt?

A. Either Judge Pratt or Harry Pratt.

Q. Don't you know that he got the key from Harry Pratt and that Judge Pratt was somewhat incensed about the matter that his office would be used for a purpose of that kind? Don't you know that? [370]

A. I will answer that fairly. Judge Pratt said something about it just two or three days ago. That was the first knowledge I had that he was not the man that had given his consent. I said to Frank Hall "You better get the key from Judge Pratt" or "Get the key from Pratt" is what I said, or "from Judge Pratt," or whoever it was, and afterwards Frank said "I have got the key and we can use the office."

Q. Did it come to your knowledge that Judge Pratt was highly incensed that his office should be used for that purpose?

(Testimony of J. H. Miller.)

A. No. He said something to Hall. I don't think he was highly incensed.

Q. About using it without his knowledge?

A. I don't know just what that was. I didn't hear the conversation myself.

Q. Don't you know, as a matter of fact,—I don't know that you do, but I am asking you if you do—that Judge Pratt went down to the marshal's office and called Frank Hall, who was in there, and who had gotten the key from Harry and called him down for doing such a thing as that?

A. I don't think so. I think Frank Hall said he met him somewhere on the street. I don't think he ever came to the marshal's office.

Q. What were the specific instructions that you had given Frank Hall and McMullen in regard to what they were to do over there in Pratt's office?

A. They were there to see who went in that building.

Q. Was it possible, Mr. Miller, from the condition of the light there to recognize a person who went in? [371]

A. No, I don't think it was to see exactly and know just who went in, but my instructions were—(interrupted).

Q. You could see the fact that some person had gone in there?

A. My instruction was that if they saw a man and a little girl go in there and nobody left, and they were satisfied that they were in there, they were to go up and be closer by so that they could see, if

(Testimony of J. H. Miller.)

anybody came out, who they were.

Q. They knew who the man and woman were supposed to be?

A. Yes. But from where they were I don't think they could recognize them at that distance.

Q. Where were you, yourself?

The COURT.—A man and a child, you mean, don't you? You said a man and a woman.

Mr. MARQUAM.—Q. You and the deputies knew who the girl was who was supposed to come there?

A. Yes.

Q. And they knew what she was going there for? They knew the whole scheme? You didn't leave them in the dark?

A. If you call it a scheme you can use that language.

Q. The little girl the other day called it a trap.

A. Then call it a trap.

Mr. ROTH.—I object to that. The little girl said he set his own trap.

Mr. MARQUAM.—Your deputies well knew the plan, didn't they?

A. Yes, at least each one knew his part of it.

Q. They knew what you were after?

A. Yes, sir. They knew practically what I was after.

Q. Where were you? [372]

A. I wasn't around there at all. I was outside and down here to see if that little girl was coming to do what Mr. Herrington told me she was going to.

Q. Mr. Herrington had brought her up from his

(Testimony of J. H. Miller.)

house to the corner of the bank here where you met them?

A. No. I met them down below by the N. C. somewhere.

Q. That is right. And you walked up with them, and Herrington left you at the corner here?

A. Well, I left them. I didn't walk with them. I left them down below here aways, and I think Herrington and the girl walked up farther and then they separated, and she walked up the street and crossed over.

Q. Where did you go after leaving them on Second Street?

A. I didn't go anywhere. I stuck around a little and strolled up that way.

Q. Shortly after she went up? A. Yes.

Q. George Berg told you when you met them that he had gone up there?

A. No. He told me—(interrupted).

Q. Well, during sometime while the girl was in the house there or in the bicycle-shop, Hall and McMullen came out of there and went down, did they not, out of Pratt's office?

A. They were out when I came up there. Hall was down on McPhee's corner and McMullen was standing up here on Mrs. Wilson's corner.

Q. Well, now, to fix the time, how long would you say it was, judging the time it would take the little girl to walk from where you had left her up to Rose's bicycle-shop, how [373] long would it be after she got in there until you got up there and

(Testimony of J. H. Miller.)

saw McMullen on one corner and Hall on the other?
About how much time elapsed?

A. That would be hard to tell you.

Q. Couldn't you fix it by what you did and where you walked? A. No.

Q. Did you do anything else or go anywhere than to walk slowly up to that place?

A. I don't remember whether I just walked along or stopped and waited, or just exactly what I did do.

Q. Were you at any time when you were going up Second Street—I presume going up there you would be on Second Street? A. Yes, sir.

Q. Was Laura Herrington in sight ahead of you?

A. I think I saw her cross over, or what I supposed to be her, cross over.

Q. And turn around the corner?

A. No. Cross over to Wilson's Bath-house.

Q. She went up on this side of the street?

A. I think she went up on this side of the street, if I remember correctly.

Q. And you were down on the Cushman Street corner? A. Down here somewhere.

Q. At least you think you remember of seeing her cross over?

A. I think I did. If I remember, I saw someone cross.

Q. From there after you had seen her cross over, you didn't go anywhere else, but continued walking up Second Street until you got to the corner?

A. I didn't go anywhere else. Whether I continued walking [374] or waited, I don't know.

(Testimony of J. H. Miller.)

Q. I was trying to get that as definite as possible, to show what time elapsed.

A. Yes. I want to do everything I can to try and fix that time.

Q. Would you say it would be a fair statement of the situation that as far as you remember, after seeing her cross the street, you continued to walk up probably slowly until you got up there on the corner?

A. I couldn't like to say anything like that, fix a thing that I am not positive of.

Q. You have no remembrance of going off of Second Street or doing anything else?

A. No. I am satisfied I didn't go off of Second Street. I don't believe I did. I think I was on Second Street all the time.

Q. When you got up to the corner, Pete McMullin and Hall had come out of Judge Pratt's office?

A. Yes, sir. They were out then. Hall was down on the McPhee corner and McMullen was up on the Wilson Bath-house corner.

Q. How long was it after you arrived at the corner there before anybody who had been in this room, this bicycle-shop, came out?

A. It was not very long.

Q. Wasn't it almost immediately, Mr. Miller?

A. I don't recollect. There was not very much time elapsed. I know that.

Q. Do you know what it was that caused Pete McMullen and Hall to come out of Pratt's office and go down towards the bicycle-shop? Was it, or was it

(Testimony of J. H. Miller.)

not the fact that a light [375] was either turned on or turned off that they could see from this office, and they immediately went down there. Isn't that the fact? A. I won't be too sure.

Q. You wouldn't be too sure, but anyway they were out of Judge Pratt's office? A. Yes, sir.

Q. And standing on the corner?

A. I think they reported to me that they saw these two people at different times go into the building, and they came out, as I had instructed them to come, to be able to determine who that was that was in there.

Q. And very shortly after at least you got there, somebody came out of the building. Who was it?

A. I don't know just who came out. I couldn't see any of them from where I was.

Q. What deputy had gone down first to the bicycle-shop, or in front of the bicycle-shop?

A. I don't think either one of them.

Q. Somebody must have gone down there. Somebody did go down there.

A. That was after that I think.

Q. After what? I asked you who was the first one that went down there. A. I don't know.

Q. Didn't you see them?

A. No, sir. I went back behind after these people came out. I went back in behind to where the other boys were. Then we came out after that, and when I came out, if I remember [376] right, McMullen was walking up with Mr. Wooldridge between the Wilson bath-house and Mr. Dodge's office, out in the middle of the street. And the others came out if I

(Testimony of J. H. Miller.)

remember right, now, and I said to them to come up to the office. I didn't go to the bicycle-shop.

Q. Didn't you look out—didn't you make an investigation at that particular time, or have some of your deputies do it, to see what this girl was doing or what was happening to her?

A. What was happening to her where?

Q. You knew where she had gone. A. Yes.

Q. You knew she was supposed to be in that bicycle-shop. Weren't you interested enough to go yourself or have some deputy go in there to see where she was? A. I had two men stationed there.

Q. Where? A. At the back.

Q. They couldn't get through that partition?

A. They could get through it pretty easy, a very thin door there.

Q. They could have gone right through there?

A. Yes. I think so.

Q. That is all nailed up. There is no way of exit or entrance there?

A. I know there is a door there and a man could go right through it if he wanted to, if there was anything serious enough for him to go through.

Q. Anyhow you didn't go yourself or send any deputy down there [377] to see what this man was doing there.

A. I had those two there all the time.

Q. You were relying entirely upon them?

A. Why, yes.

(Short recess; jury retire in charge of bailiffs and subsequently return into court when the defendant

(Testimony of J. H. Miller.)

and his attorneys and the District Attorney are present and the trial is resumed; the same witness on the stand.)

Q. Mr. Miller, do you know Mr. Wooldridge's daughter? Do *you who* she is? Do you know her when you see her?

A. No. I don't think I do.

Q. Haven't you seen her, Mr. Miller to know who she is? A. If I have I don't recall it.

Q. Do you know Mrs. Kettleson? A. Yes.

Q. You know that she is running a restaurant here? A. Yes, sir.

Q. You eat there most all the time? A. I do.

Q. Did you ever see Mrs. Wooldridge's daughter start to work there—Mr. Wooldridge's daughter, in there for a day or two working?

A. No, sir. Not that I know of.

Q. To refresh your memory, fixing the time about during last summer, June or July, isn't it a fact that about that time that you were in the restaurant eating as usual and you saw Mr. Wooldridge's daughter working there for the first time,—she had been there a day or two—and you asked Mrs. Kettleson what she was doing here. She said she [378] was going to work for her. That you told Mrs. Kettleson in substance and effect "No. She can't work here"?

A. No, sir.

Q. Did you ever say anything to Mrs. Kettleson—(interrupted). A. No, sir. Absolutely not.

Q. Absolutely not? A. Absolutely not.

Q. You didn't know she was working there?

(Testimony of J. H. Miller.)

A. No, sir. I don't recall that Mrs. Wooldridge's daughter ever worked for Mrs. Kattleson.

Q. Just starting to work, being there working for the first time? A. No, sir. Absolutely not.

Q. Are you prepared to say, Mr. Miller, that you never told Mrs. Kattleson that she couldn't let her work there, or whether that is the words or not, that is the substance and effect of it that because of Wooldridge being an enemy of the marshal's office she couldn't be permitted to work there?

A. No, sir. Never anything of that kind, nor have I ever said anything to Mrs. Kattleson about any of her help, only I might have tried to recommend somebody to her.

Q. You are positive and clear about that?

A. You bet I am clear about that.

Mr. MARQUAM.—That is all. [379]

Redirect Examination.

(By Mr. ROTH.)

Q. You say that you went to Mr. Riggs at the request of your superior?

A. Yes, sir. It was not Mr. Riggs, but Mr. Raeburn.

Q. Mr. Raeburn, Mr. Riggs' man? A. Yes, sir.

Q. What did Raeburn say to you when you went there and told him in effect what Mr. Marquam said; that you didn't want him to employ Mr. Wooldridge, or something to that effect? What did Mr. Raeburn say to you?

(Defendant objects as immaterial; that the purpose of the testimony was to show the interest of the

(Testimony of J. H. Miller.)

United States marshal and his deputies. Objection overruled. Defendant excepts and exception allowed.)

Q. What did he say to you?

A. Why, he told me that he didn't—he said to me, well, he said “I don't know as I can do anything in that matter. Mr. Wooldridge has been recommended to me, and he has been recommended by different ones, and among others by Mr. Roth.” That is what he said to me.

(Defendant moves to strike the answer as hearsay. Motion denied. Defendant excepts. Exception allowed.)

Q. Mr. Marquam asked you about advice that I gave to you with reference to this preparation. What advice did I give you?

A. You told me as regards the law in the matter, that the only thing that could be done within the law in these investigations would be to get evidence in regard to what [380] she claimed to have been the crime previous to that time.

Q. Was anything said in my advice to you upon the subject as to whether or not as to how far that this was permitted to go, should be permitted to go?

A. Yes.

Q. What was that?

A. You told me that I couldn't be permitted—that if the thing developed in such a way that Mr. Wooldridge attempted to lay any hands on the girl or anything else, that it should be stopped right then and there; that nothing of that kind should be allowed.

(Testimony of J. H. Miller.)

Q. That no acts of any kind should be permitted?

(Defendant objects as leading. Overruled. Exception allowed.)

A. Yes, sir. That is it.

Q. Now, with reference to the statement that Mr. Berg made to you about what he heard down there, Mr. Marquam brought that thing out and dwelt on it at great extent. Now, let me ask you this: If, after this statement had been made and sworn to by Mr. Rose, if Mr. Berg made any statement as to the correctness of the statement as to what did actually occur there.

(Defendant objects to the form of the question in which it is put as not proper redirect examination. Objection overruled. Defendant excepts. Exception allowed.)

A. Mr. Berg—I said to Mr. Berg “Is there anything more that you know of, that has not been said,” after Mr. Rose said that was all that he remembered. Mr. Berg said “No. I think that is substantially correct as far as I know.” [381]

Q. After Mr. Berg stated that, and you had this in writing, did you make any particular effort to find out just exactly in detail what Mr. Berg had said?

A. No. Not in detail. No.

Q. Did you consider that that statement covered it?

A. I did. I considered that that was the whole thing.

Q. Where is Deputy Marshal Wood now?

A. He has gone on a long trip down river.

(Testimony of J. H. Miller.)

Q. When did he start?

A. I don't remember the exact date, several days ago.

Q. Do you know whether or not the District Attorney's office knew that he was going to go?

(Defendant objects as immaterial. Objection sustained.)

Mr. ROTH.—That is all.

Mr. MARQUAM.—No further examination.

Testimony of George Herrington, for Plaintiff.

GEORGE HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name?

A. George Herrington.

Q. Are you the father of Laura Herrington?

A. Yes, sir.

Q. How old is she?

A. She is fourteen years old,

Q. When was she born? [382] A. 1901.

Q. What day of the month?

A. The second or third of August, I believe. It was in August.

Q. Where was she born? A. Circle City.

Q. Did you ever live on Ester Creek?

A. Yes, sir.

Q. How many times did you live on Ester Creek?

A. I was there a year, a little over a year.

Q. How many times did you live there, just one time? A. That was all, yes, sir.

(Testimony of George Herrington.)

Q. When did you go there? A. 1913.

Q. What time of the year? A. In July.

Q. And what time did you leave there?

A. I moved in from there last—I think September, August or September.

Q. Then you stayed there over two years.

A. No. I left—I moved in in 1913, moved in in 1914.

Q. Now you get those dates right, about when you moved out there and when you moved back.

A. I moved out there year before last, 1914.

Q. That was not 1913? A. No. It was 1914.

Q. Year before last? A. Yes.

Q. What time of the year did you move out there?

A. It was July? [383]

Q. In July. And when did you move back here?

A. We took the house, I think it was August or September.

Q. Of last year? A. Yes, sir.

Q. Last August or September? A. Yes, sir.

Q. Where were your family, that is, your wife, Catherine, and Laura last Christmas, a year ago, which would be Christmas of 1914?

A. They were in Fairbanks.

Q. When did they leave out there to come here?

A. I can't say the exact time but a few days before Christmas.

Q. How long did they stay here?

A. I think they stayed here a couple of weeks?

Q. Did they stay here until after New Year's, do you know?

(Testimony of George Herrington.)

A. I couldn't be sure. It was quite a while ago and I have forgotten.

Q. Did you come in at that time? A. No, sir.

Q. Did Laura Herrington, your daughter, ever tell you at any time that she had had sexual intercourse with W. H. Wooldridge?

(Defendant objects as hearsay. Objection overruled. Defendant excepts. Exception allowed.)

A. She never told me but I heard her tell Marshal Miller.

Q. Marshal Miller and who else?

Mr. MARQUAM,—We object.

The COURT.—The question was answered, that “She never told me.”

Mr. MARQUAM.—We move that the remainder of the answer be [384] stricken, that all the answer be stricken, and in deference to the previous ruling of the Court, make a special request that the latter part of it be stricken as hearsay.

The COURT.—The portion of the answer in which the witness stated that he heard her tell Marshal Miller, may be stricken and the jury instructed to disregard it.

Mr. ROTH.—When was the first time that you ever heard that she said that Mr. Wooldridge had had sexual intercourse with her?

(Defendant objects as irrelevant, incompetent and immaterial. Objection sustained.)

Q. Were you in the District Attorney's office in the courtroom in Fairbanks—in the courthouse in Fairbanks around about the 10th of February, 1916,

(Testimony of George Herrington.)

when Chief Deputy Miller, J. H. Miller and R. F. Roth and Laura Herrington were present?

(Defendant objects as leading. Objection overruled. Defendant excepts. Exception allowed.)

A. Yes, sir.

Q. How did you come to go there at that time?

A. I was called on the telephone to come over to the marshal's office, and Mr. Miller asked me if I could bring—

(Defendant objects to any conversation between the witness and Miller. Objection sustained.)

Q. While you were present in there did you hear all the conversation that took place between Laura Herrington and myself, and Laura Herrington and J. H. Miller? A. Yes, sir.

Mr. ROTH.—You may cross-examine the witness.
[385]

Mr. MARQUAM.—No cross-examination.

Testimony of Mrs. Exena Herrington, for Plaintiff.

Mrs. EXENA HERRINGTON, a witness for plaintiff, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Exena Herrington.

Q. Are you the wife of George Herrington?

A. Yes.

Q. Are you the mother of Laura Herrington?

A. Yes.

Q. Are you acquainted with Mr. W. H. Woolbridge, the gentleman sitting over there at the table?

A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. How long did you know him?

A. In Fairbanks here.

The COURT.—On Fairbanks Creek?

A. No. Here.

Mr. ROTH.—Q. Have you known him ever since he has lived in Fairbanks? A. Yes.

Q. Did you see Mr. Wooldridge down at your house one day in February when he came about some potatoes, that is last month? A. Yes.

Q. Did Mr. Wooldridge come into the house?
[386]

A. Yes. I called him in.

Q. What did he say when he came there?

A. He said that George spoke to him that he wanted some potatoes, and he asked me if I had enough for a few days. I told him I think so, and I told him to see George first if he wanted them he could bring them.

Q. Well, where was Laura at that time?

A. She was upstairs.

Q. All right. Did Mr. Wooldridge come in?

A. Yes. Laura told me to tell him, to call him in.

Q. When he came in did you talk to him some more?

A. No. I excused myself and went upstairs and left them alone.

Q. Left Laura and Wooldridge alone? A. Yes.

Q. How long did he stay there at that time?

A. I don't know.

Q. Did you hear him go out or did you come down before he went out?

(Testimony of Mrs. Exena Herrington.)

A. Laura called me that he was going out so I come downstairs.

Q. Did he come back again? What time of day was that that he came there about the potatoes?

A. About ten o'clock in the morning.

Q. Did you see him again? A. Yes.

Q. How long after that did you see him again that same day? A. About half an hour after.

Q. Where were you? A. I was in the cache.

Q. Did he come into the cache where you were?
[387] A. Yes.

Q. Just state what was said in there by you and by Mr. Wooldridge at that time.

A. I don't know what he said.

Q. Don't you know anything that he said there? Did he give you anything?

(Defendant objects as leading, suggestive, and improper examination.)

Q. Did he say anything?

A. He told me in the house that he had something for me.

Q. In the house? A. Yes.

Q. And then did you go into the cache?

A. No. That was before. But after that.

Q. After that. Then what did he do?

A. So I told him to come upstairs.

Q. All right. Did he go upstairs? A. Yes.

Q. Well, what did he—What happened up there?

A. Well, he said he was afraid to come to the house.

Q. All right. Go ahead.

(Testimony of Mrs. Exena Herrington.)

A. Well, I said, "Don't you be afraid. You can come in anytime you want to." So, well, he said he was kind of afraid. Well, I said, "If even I am not home, you can come in and sit down and talk to the girl." Well, he said he was kind of afraid. I told him he not to and I asked him "Ain't you know Laura before," and he said "Yes." Well, I said, "You don't have to be afraid then. You can come in any time you want to, even if I am not home."
[388]

Q. Did he give you anything?

A. Not this time.

Q. All right. Is that all? What else was said there at that time, if anything?

A. He told me to go up to his place. I told him I couldn't.

Q. What did he tell you about his place?

A. Well, he said his wife was working in the laundry. She won't be home until twelve o'clock. I told him I couldn't go because the neighbors would see me and talk about it.

Q. Did he give you anything?

(Defendant objects as leading. Sustained.)

Q. Go ahead and tell everything.

A. And I told him to bring it if he could. Well, he said, "Can't you come up to-morrow at ten o'clock?" I said "I don't know," and I said, "Might I would and might not," and so he said he would go off and get it, and I told him all right.

Q. Go ahead. A. So he went up and got it.

Q. What? A. That stuff.

(Testimony of Mrs. Exena Herrington.)

Q. What? A. Whiskey.

Q. He got it you say. What did he do with it?

A. Yes. He went up and got it.

Q. All right.

A. And I was in the cache when he brought it.

Q. All right.

A. And he gave me the dollar and he said, "Give that to [389] Laura." I said, "All right."

Q. Did he give you the bottle, too?

A. Yes, at the same time.

Q. What kind of a bottle was that?

A. Well, I don't know, a flask bottle about that big and that high (showing).

Q. Did he say where he had got it? A. No.

Mr. ROTH.—You may cross-examine.

Mr. MARQUAM.—I move that all this testimony of this witness in regard to any whiskey or liquor be stricken as incompetent, irrelevant and immaterial.

(Motion denied. Defendant excepts. Exception allowed.)

Cross-examination.

Mr. MARQUAM.—Q. Mrs. Herrington, how old are you? A. I don't know my age.

Q. Is there any way that you can explain or tell, so this jury will know about how old you are?

A. I don't know. My father never tell me anything, my age or anything.

Q. Did any of your people where you were raised ever tell you how—that is, that were older than you—ever tell you how old you were? A. No.

Q. Where were you born? A. St. Michael.

(Testimony of Mrs. Exena Herrington.)

Q. And you have no family record or history so as to determine [390] when you were born?

A. No.

Q. Do you know when you left St. Michael?

A. Well, I was a little bit of a girl when I left St. Michael.

Q. Where did you go to after leaving St. Michael?

A. Up Stewart River. All over that country I was.

Q. About how old were you then?

A. I don't know. Might I was sixteen or seventeen.

Q. Do you remember how old you were when you first went to Circle and lived there? A. No.

Q. That was after you had been up in the Stewart River country? A. Yes. Long after.

Q. When were you married to George Herrington? A. That is going on eighteen years.

Q. Eighteen years?

A. You see I can't count, but from my little girl here Catherine, she will be eighteen on the 16th of May. We were married nineteen years. Now me and George have been married.

Q. About nineteen years ago since you and George were married? A. Yes.

Q. Were you married before?

A. Well, called it marriage, stayed—(interrupted).

Q. I understand you. You were married by the church with George Herrington?

A. No. By the judge.

(Testimony of Mrs. Exena Herrington.)

Q. That is the first marriage—(interrupted).

A. Yes. [391]

Q. —by the judge or by a minister?

A. Yes. By the judge.

Q. That is the first time you were married according to white men's rules or laws? A. Yes.

Q. When did you come over here from Circle?

A. I can't remember when we come over here.

Q. This town here was pretty small when you first came.

A. Yes, that spring. It was struck in the winter, and we came up that spring.

Q. Did you come by boat? A. Yes.

Q. How old was Laura when she came here?

A. She was only about a year old.

Q. Laura has a younger sister, has she not?

A. Yes.

Q. What is her name? A. Lena.

Q. How old is she? A. She is six.

Q. How long have you known Mr. Roth?

A. I just know him here.

Q. About how long?

A. Since I started to come up here.

Q. Do you remember when that was?

A. I don't know. I can't keep up the days, because I don't know how to read or write.

Q. Do you know Marshal Miller?

A. No. [392]

Q. You know who he is?

A. I have seen him down in the house.

Q. When did you first see him to know who he

(Testimony of Mrs. Exena Herrington.)

was? A. He come down to the house.

Q. You don't remember, you can't tell us when that was or what date it was? A. No.

Q. I understood you to say that Mr. Wooldridge came to your house one morning about ten o'clock?

A. Yes.

Q. Just tell the jury what he said when he came there.

A. Why, he said that George spoke to him the other day that he wanted some potatoes. I said, "Yes. I guess we need potatoes." Well, he asked me if we need them right away. "Oh, I don't know," I said. And he said to me there would be enough for you for a little while. I said "Yes." Well, I said "See George. If he wanted them right away, you can bring them." That is what I told him.

Q. Did you ask him into the house?

A. Laura told me to tell him to come in.

Q. Let me ask you, Mrs. Herrington, how long a time had it been before that that Mr. Wooldridge had been at the house?

A. That was the first time he had been in the house.

Q. That is, you mean the first time right now, in this immediate vicinity of time? A. Yes.

Q. How long had it been since you had ever seen Mr. Wooldridge around your house, or seen him?

[393] A. Oh, a couple of years, I guess.

Q. A couple of years. And the first time he came there to the house inquiring about these potatoes,

(Testimony of Mrs. Exena Herrington.)

Laura told you to ask him in? A. Yes.

Q. And she told you then to go upstairs?

A. No. She didn't tell me. I excused myself. I told him, "I got to go upstairs and work."

Q. I understood you to say in your direct examination that Laura told you to go upstairs. I may have been mistaken.

A. No. She didn't tell me to go upstairs.

Q. You went up yourself?

A. Yes. I went up myself.

Q. Well, how long had it been from the time that Wooldridge came there and knocked at the door and you asked him in until you went upstairs?

A. I didn't look at the time.

Q. About how long?

A. It may have been about half an hour.

Q. What was about half an hour; that he was there? A. Yes.

Q. I didn't ask you that. I was asking you, from the time that he came and knocked on the door and you asked him to come in, how long was it after that that you went upstairs yourself?

A. Just a minute after he came in I went upstairs.

Q. Then, as soon as Laura called to you and told you that he had gone—(interrupted).

A. She said he—(interrupted). [394]

Q. You came down again? A. Yes.

Q. What did you go upstairs for?

A. I go up to fix the beds. I was busy that morning.

Q. Why did you immediately come down when

(Testimony of Mrs. Exena Herrington.)

Laura told you that he had gone?

A. Well, I wanted to say to him "Good-by" when he was going away, you know.

Q. When you came down had he gone or was he still there? A. He was there.

Q. And how long were you upstairs? Was that what you referred to a while ago, the time you were upstairs, when you said it was half an hour?

A. It may have been half an hour.

Q. What was your purpose in leaving Laura and Mr. Wooldridge alone there after Laura had told you to invite him in? What was your purpose? What did you do that for?

A. Well, they were making a plan for him, so I gave her a chance to talk to him.

Q. That is what I thought. Who was making a plan for him, and who told you about it?

A. She told me.

Q. When did she tell you that?

A. She told me the next day when Mr. Wooldridge left there.

Q. The next day after? A. Yes.

Q. Or the day before? A. No. The next day.

Q. Let me ask you this question: At the time that Wooldridge [395] first came there and Laura told you to ask him in, you knew that they were laying a plan for him. She had told you? A. Yes.

Q. You knew that. Now when had you been told about that?

A. The next day, you know. Not the next day but I can't explain to you.

(Testimony of Mrs. Exena Herrington.)

Q. Do you mean the day before?

A. The day before, yes.

Q. And were you told that probably Wooldridge would come to the house to see you about some potatoes, and if he did come they were laying a plan for him? A. Yes.

Q. Did you approve of that, Mr. Herrington? Was that satisfactory to you?

A. I can't understand.

Q. Did you like that? A. I like it?

Q. I mean, when they told you the day before Wooldridge came there that they were going to get a plan to—(interrupted).

The COURT.—Q. Was it all right with you?

A. Yes.

Mr. MARQUAM.—Q. Did you know what they wanted to do this for? A. No.

Q. Then why was it all right with you if you didn't know anything about it?

A. She told me that they were going to plan for him, and she didn't tell for what.

Q. And still, not knowing anything about it, it was all right [396] with you, Mrs. Herrington?

A. Yes.

Q. Did George tell you anything about it?

A. No. He never told me anything about it.

Q. Just Laura told you about it? A. Yes.

Q. Then why did you think it was necessary then, Mrs. Herrington, when he came in for you to go upstairs? Did you know that Laura was trying to lay this plot for him and that you might interfere with

(Testimony of Mrs. Exena Herrington.)

it? Was that the idea? A. Yes.

Q. Didn't you ask Laura when she told you this, that they were trying to lay a plot for him, or a plan for him, whatever word you used, didn't you ask her what it was all about? A. No.

Q. You didn't ask her what it was about?

A. No.

Q. Well, I would like to ask you again why you thought it was all right if you didn't know anything about it, what the plan was or what it was for?

A. It is with me like this; I don't want to know anything. I never ask things.

Q. Did Laura tell you that the marshal was talking to her? A. Yes.

Q. And that the marshal wanted to get him?

A. Yes.

Q. Did she say anything to you about Mr. Roth, the District [397] Attorney, wanting to lay a plot for him and get him? A. No.

Q. She didn't mention Roth's name?

A. No.

Q. She just mentioned the marshal's name?

A. Yes.

Q. And you supposed, of course, if the marshal wanted to do a thing like that that it must be all right? A. Yes.

Q. That is the way you looked at it. Well, Mrs. Herrington, was Laura in the habit of laying plans like that? A. I don't know.

Q. When was the first time that George Herring-

(Testimony of Mrs. Exena Herrington.)

ton, your husband, talked to you about this affair, this trap?

A. He never tell me anything about it.

The COURT.—I want to call counsel's attention to the fact that that is not cross-examination. When the proper time comes you can make this witness your own witness, if you so desire. (Argument.)

Mr. MARQUAM.—Do I understand the Court to rule that this is improper cross-examination?

The COURT.—Yes. The Court has so ruled.

(Defendant excepts. Exception allowed.)

(Here the Court takes a recess until two P. M. to-day and the jury, after being admonished, withdraw in charge of the bailiffs. At two P. M. the defendant and his attorneys and the District Attorney and the jury are present in court and the trial is resumed, and said witness is further cross-examined.)

Mr. MARQUAM.—Q. Mrs. Herrington, in answer to a question asked you by Mr. [398] Roth this morning, you said, "Laura told me to call him in," did you not? You testified so this morning.

A. Yes.

Q. Referring to Mr. Wooldridge, "Laura told me to call him in." A. Yes.

(Here the witness calls for a glass of water and is given same.)

Q. I was asking you about your statement this morning that Laura told you to call him in, referring to Mr. Wooldridge. A. Yes.

Q. Where was he then, at the door?

(Testimony of Mrs. Exena Herrington.)

A. He was at the door, outside.

Q. And just what did he say to you when he came to the door?

A. He said, "George wanted— He told me that he wanted some potatoes."

Q. George told him that he wanted some potatoes? A. Yes.

Q. Was that the front door or the back door?

A. The front door.

Q. He just stood there? A. Yes.

Q. Did he ask if George was there, or did he just ask you about the potatoes?

A. Well, he just asked me about the potatoes.

Q. He told you that George and he had spoken together about some potatoes before that?

A. Yes.

Q. And you didn't ask him in, or he didn't offer to come in until the girl told you to have him come in? [399] A. Yes.

Q. Then you asked him to come in? A. Yes.

Q. And you went upstairs. You said this morning that he gave you a dollar to give to Laura, I understood? A. Yes.

Q. Just what did he say and what did you say at that time? (No answer.) Do you understand the question?

The COURT.—Q. What did he say when he gave you a dollar, and what did you say?

A. Well, he told me to give it to Laura.

Mr. MARQUAM.—Q. He told you to give it to Laura? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. Isn't this true, Mrs. Herrington: That you asked Mr. Wooldridge to loan you a dollar, that you had nothing to eat in the house, that you were hard up? A. No.

Q. That is not true? A. No.

Q. Do you know Mr. Dodge, know who he is?

A. I seen him once.

Q. Where? A. Up to Morency's.

Q. He was there talking with you? A. Yes.

Q. Didn't he ask you what had occurred there at the time that Wooldridge came there? He was talking to you about that, was he not?

A. Well, he asked me a few questions there.

[400]

Q. Yes? He asked you, did he not, if Wooldridge had given you any money, or a dollar, did he not?

A. I don't remember if I did answer that or not.

Q. That is what you were there with him for. At least that is what he was there for, to talk with you and find out what you knew about this case? Isn't that true? Mrs. Herrington, isn't that true?

A. I don't know.

Q. Well, anyway, he was talking.

A. Yes, I was talking to him.

Q. And talking about this case? A. Yes.

Q. And did you not at that time tell Mr. Dodge that you asked Mr. Wooldridge to loan you a dollar or to give you a dollar?

A. I didn't ask him for a dollar.

Q. The question is: Did you not tell Mr. Dodge

(Testimony of Mrs. Exena Herrington.)

at that time when he was finding out what you knew about this case, that: "I asked Mr. Wooldridge to let me have a dollar" or "to loan me a dollar"?

A. No.

Q. Isn't that what you told Mr. Dodge?

A. No. I didn't.

Q. You deny that?

A. No, I didn't ask him that.

Q. Then you deny it. Well, had there been anything said between you and Laura and Mr. Wooldridge about any money, before he gave you this dollar?

A. No. I never know nothing about the dollar, and he gave it to me to give to Laura. That is all I know. [401]

Q. Without saying anything, just came and handed you a dollar.

A. Yes. He said—(interrupted).

Q. What did he say?

A. He said: "You give that to Laura."

Q. You gave that to Laura? A. Yes.

Q. Did he say what for or why? A. No.

Q. Was Laura there? A. No.

Q. Where was she?

A. She was in the house.

Q. Where were you and Mr. Wooldridge?

A. In the cache.

Q. Nobody heard what was said there except you and Mr. Wooldridge? A. That is all.

Q. Isn't it true, Mrs. Herrington, that when Wooldridge was there that time that after he

(Testimony of Mrs. Exena Herrington.)

started away, that you followed him out and closed the door and then was in the cache or by the door there and at that time asked him if he would not let you have a dollar; that you were hard up; that you had nothing to eat in the house; and that you wanted to get something to eat with? Isn't that true? A. No, I did not.

Q. Isn't it true that that was the condition in your house with regard to food; that you had nothing to eat there? Isn't that true?

A. That is true all right, but I didn't ask Mr. Wooldridge for [402] a dollar to eat.

Q. You didn't? A. No.

Q. That condition was true there at your house?

A. Yes.

Q. What kind of a bottle of whisky do you claim that Mr. Wooldridge gave you?

A. I can't tell you. A flask bottle.

Q. Now, just describe to the jury what kind of a flask.

A. About that long, I guess (showing), a pint, what they call it.

Q. A pint. A. Yes.

Q. You know the difference between a pint and a quart bottle, this big round bottle, don't *you the* difference? A. Yes.

Q. You know the difference between a pint bottle and a half a pint bottle? A. I guess I do.

Q. You guess you do. Now, what color was that bottle? A. White.

Q. It was white? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. Where is that bottle now?

A. I don't know. The marshal got it.

Q. Which marshal; Marshal Berg? A. Yes.

Q. All right, Mr. Berg got it. When did he get that bottle from you?

A. I think it was—I think it was two days after. I don't know. [403]

Q. You think it was two days. Now, what do you mean by two days, Mrs. Herrington? Two days from when?

A. Two days after this happened, I guess.

Q. Two days after it happened he came up there, and did you have that same bottle there?

A. Yes.

Q. That Mr. Wooldridge had given you?

A. Yes. I put it away.

Q. What did you put it away for?

A. I didn't want nobody to see it.

Q. What? A. I didn't want nobody to see it.

Q. Did you drink what was in it?

A. Yes. I did.

Q. And you didn't want anybody to see the bottle? A. No.

Q. Where did you put it?

A. Under my pillow.

Q. Under your pillow. And when Mr. Berg came up there, what did he ask you, or what did he say?

A. He asked me: "Where is the bottle that Mr. Wooldridge gave you"? I said, "It is empty." He said: "It don't make any difference." So I gave it to him.

(Testimony of Mrs. Exena Herrington.)

Q. You gave it to him and he took it away.

A. Yes.

Q. And that, you say, was a pint bottle?

A. Yes.

Q. You don't know what Mr. Berg did with that bottle?

A. No, I don't know what he done with it. [404]

Q. Did you see Mr. Berg after that and talk with him about any bottle or different kind of bottles? Did he come back and ask you if you had any different kind of bottles? A. No.

Q. He never came back? A. No.

Q. After Mr. Wooldridge went out of the house when he came there the first time and you invited him in, how long was it after that that he came back the next time? A. Half an hour.

Q. Half an hour. How long did he stay then? Was it the first time—when was it that he gave you this dollar? [405]

A. That the same time he gave me that bottle.

Q. The same time he gave you the bottle. At the time that Mr. Dodge was talking to you about what you knew of this case and what happened up there and what Wooldridge had done when he was there, did you tell Mr. Dodge anything about Wooldridge giving you any liquor or whisky?

A. I don't tell him that.

Q. He was asking all about just what happened and what Wooldridge did, wasn't he?

A. Yes. He asked me a few questions, but he didn't ask me much.

(Testimony of Mrs. Exena Herrington.)

Q. Do you remember what day of the week it was that you have just been testifying about, or what day of the month, what date it was? I assume you can tell the date? A. No.

Mr. ROTH.—Which time?

Mr. MARQUAM.—When he was there the first time.

Q. Do you know what day of the week it was?

A. No.

Q. Well, were those potatoes delivered?

A. Yes, he delivered them the next day.

Q. Well, what time of the day?

A. It must have been nine or half-past nine.

Q. And who was there then?

A. George was there.

Q. George was there and you were there?

A. Yes. All of them was there. [406]

Q. Was Laura there? A. Yes.

Q. What was done or said at that time?

A. He didn't say nothing.

Q. He just delivered the potatoes and went away about his business? A. Yes.

Q. One sack of potatoes? A. Yes.

Q. You didn't ask him in the house?

A. Well, George told him to bring the potatoes in.

Q. I mean, ask him to stay there? A. No.

Q. The girl didn't ask you to have him stay?

A. No, she was asleep.

Q. She was asleep then. What were you doing when he came? A. Nothing.

Q. I mean what were you occupying your time

(Testimony of Mrs. Exena Herrington.)

with at that particular time; what were you doing? You must have been doing something, whether you were sitting down, or getting breakfast, or washing the dishes, or something of that kind; what were you doing when he came in?

A. I was in the kitchen there waiting for George to eat breakfast.

Q. You were cooking breakfast yourself?

A. Yes.

Q. For yourself and George and the children?

A. Yes.

Q. And you were just waiting for George to finish breakfast and then you were going to do up the dishes? A. Yes. [407]

Q. You were all right at that time? A. Yes.

Q. You were not drunk then? A. No.

Q. Or intoxicated? A. No.

Q. Then when did you see Mr. Wooldridge again, Mrs. Herrington?

A. I didn't see him any more after that.

Q. What time did he come to the house again? Do you know? Was it that same day or the next day? Say. He came there the one day when he talked about the potatoes, then the next day he came back when you had gone away. Is that the idea? A. He brought the potatoes the next day.

Q. The next day in the morning? A. Yes.

Q. He was supposed to come back that evening?

A. Yes.

Q. And you were asked to go away? A. Yes.

Q. What time did you go away?

(Testimony of Mrs. Exena Herrington.)

A. I don't know what time I went away.

Q. Who asked you to go away?

A. Well, Laura told me that they were going to make arrangements there. She wanted me to go away about six o'clock.

Q. Was George there at that time? A. No.

The COURT.—We are getting back to the same proposition that [408] the Court called your attention to this morning.

Mr. MARQUAM.—Does your Honor mean with reference to anything that George Harrington said?

The COURT.—Yes.

Mr. MARQUAM.—I have a right to find out who was there. She testified she left there and wasn't there that day, and I want to know how she came to go away.

Mr. ROTH.—We object to that as not proper cross-examination.

The COURT.—Objection sustained and exception allowed.

Mr. MARQUAM.—Does the Court hold that I can't question this witness, so that I will know what the Court's ruling is, about anything that occurred or anything that she knows about this affair after that first occurrence there?

The COURT.—The Court has not so ruled. The Court has tried twice to explain that proposition.

Mr. MARQUAM.—I understand the explanation, but I don't agree with the Court's views of the law, but I will follow, and have to follow, the Court's ruling.

(Testimony of Mrs. Exena Herrington.)

The COURT.—The Court does not desire to have you cross-examine her, or examine her on matters which were not brought out on the direct. You can make her your own witness.

Mr. MARQUAM.—We wish the record to show that we further desire to cross-examine this witness about matters not testified directly to in the direct examination, for the purpose of showing her interest or motive in giving the testimony which was elicited upon direct examination, if possible.

The COURT.—Well now, that is such a complicated matter, the way you present it that the Court cannot rule upon it. [409] The Court has told you that you can do that, and has indicated to you the proper time to do it. With that, you have coupled up something that you cannot do at this time.

Mr. MARQUAM.—I understand generally what the ruling of the Court is, and we except to the ruling as contrary to law.

The COURT.—Exception allowed.

Mr. MARQUAM.—We contend, so that it will be plain as far as the record is concerned, that we have a right to cross-examine this witness upon any matter connected with this whole transaction, about which she has testified in chief, for the purpose of testing her credibility, for the purpose of testing her motives, for the purpose of testing her inclination to tell the truth, and for purposes of that character.

Q. You said that Mr. Wooldridge at one time told you that he was afraid to come to the house.

A. Yes, sir.

Q. Now, what was that in response to, anything

(Testimony of Mrs. Exena Herrington.)

that you had said? How did he happen to come to say that?

A. Well, I didn't understand you.

Q. What caused him—what made him say that, what had you just said to him?

The COURT.—Q. Do you know, Mrs. Herrington, why he told you that he was afraid to come to the house, as you stated this morning?

A. Laura told him to come at half-past seven.

Mr. MARQUAM.—Q. Why did he say he was afraid to come? A. I don't know. [410]

Q. He didn't give you any reason? He didn't say why? A. No.

Q. You didn't ask him why he was afraid to come?

A. No, I didn't ask him.

Q. *Isn't true* that when he came there that morning and said he had talked with George about these potatoes, he wanted to know whether George was there, and you told him that George would be there in the evening after supper, and for him to see George about it. Didn't you tell him that?

A. I told him he can see him in the street.

Q. You told him he could see him in the street?

A. Yes.

Q. Didn't you tell Mr. Wooldridge that George would be home that evening at seven or eight o'clock?

A. No.

Q. You didn't tell him that? A. No.

Q. You told him to see him in the street?

A. Yes.

Q. What street? What did you mean by that?

A. In the street. In the saloons somewhere.

(Testimony of Mrs. Exena Herrington.)

Q. Where?

A. In the saloons, Fairbanks Corner, or Bill McPhee's, anywhere.

Q. Did you tell him that? A. Yes.

Q. You told him to see him at Bill McPhee's or the Fairbanks corner? A. Yes. [411]

The COURT.—You asked her what was meant by in the street.

Mr. MARQUAM.—I am asking her if she said those words to him.

Q. Did you say those words to him, tell Wooldridge that he could see him at Bill McPhee's or the Fairbanks Corner? A. Yes.

Q. You told him that? A. Yes.

Q. Did you also tell him that you could see him in the street?

The COURT (to MARQUAM).—You said “You could see him?”

Mr. MARQUAM.—I beg your pardon.

Q. Did you also tell him that he could see him in the street? A. Yes.

Q. What else did you tell him?

A. That if he wanted the potatoes, he could bring them there.

Q. That if George wanted the potatoes, he could then bring them? A. Yes.

Q. You are sure that you didn't tell him that George would be home that evening at seven or eight o'clock? A. No.

Q. Now, what excuse or what reason had you for telling Wooldridge that he could come at any time?

A. Because to put a trap for him.

(Testimony of Mrs. Exena Herrington.)

Q. Put a trap for him? A. Yes. [412]

Q. So you told him that. Were you told to tell him that? Did somebody tell you to tell him that?

A. No.

Q. Why did you tell him that if it was not suggested to you, or told you? Was that your own idea?

A. No. Laura told me to tell him to come in the house.

Q. And he did come in the house?

A. So I told Mr. Wooldridge the girl wanted to see him. That is what I told him, and he came in, then I excused myself and I went upstairs.

Q. Then you told him sometime—at the time you answered the question in answer to Mr. Roth's interrogatories, to his questions, that you told him that he could come at any time. A. Yes.

Q. When did you tell him that? Was it after you had come downstairs or before you went upstairs?

A. After I came downstairs. He told me he had something for me and I told him to come upstairs.

Q. He went upstairs? A. Yes.

Q. What was it that he had for you?

A. Whiskey, I guess.

Q. I don't want any guess. Did he give you the whiskey then when you went upstairs? A. No.

Q. Then he didn't have anything for you?

A. No. He didn't have it then.

Q. Oh, but he told you he had something for you?

A. Yes. [413]

Q. But he didn't have anything at that time?

A. No.

(Testimony of Mrs. Exena Herrington.)

Q. You also told him you said this morning "even if I am not at home, you can see the girl."

A. Yes.

Q. What did you tell him that for?

A. Because she wanted to put a trap for him.

Q. And you were telling him that to help him to fall into the trap? A. Yes.

Q. You said something this morning about telling Wooldridge that he knew the girl, or had something to do with the girl, or something of that kind. What was that? A. No. He didn't say that.

Q. What did you say, or what did he say?

A. I asked him if he knowed the girl before. He said yes. Well, I said—(interrupted).

Q. Is that the first time you heard of it?

A. Yes.

Q. Is that the first time you heard about that?

A. Yes.

Q. What made you ask him about it?

A. I was just thinking in my head.

Q. Nobody had told you anything about it?

A. No.

Q. You were just guessing at it?

A. I was just guessing at it, and I asked him.

Q. You were just guessing at it?

A. Yes. [414]

Q. Nobody had ever told you anything about it?

A. No.

Q. No one? A. No one.

Q. Are you quite positive of that, sure of that?

A. Nobody told me.

(Testimony of Mrs. Exena Herrington.)

Q. I will ask you if at the time that Mr. Dodge was talking to you at that time up in the Morency house, whether you had ever heard, anybody had ever told you, either the girl or anybody else, that Wooldridge had ever had anything to do with her, and you told him the first time that you ever heard of it, or thought of it, was after the girl had been up to the District Attorney's office? A. Yes.

Q. Did you tell him that? A. Yes.

Q. Is that true? A. Yes.

Q. That is true then, is it? A. Yes.

Q. Then the girl did tell you. Had you been up to the District Attorney's office? A. Me?

The COURT.—Can't you fix the time that she was up to the District Attorney's office with reference to the other time? In one case her answer might be correct, and in the other case her answer might not be correct.

Mr. MARQUAM.—I am not trying to confuse her.

The COURT.—No, I am not trying to indicate that you are, [415] but I suggest that if you could fix that time, she might be able to answer intelligently.

Mr. MARQUAM.—How can I tell anything about it? I don't know when she was there. I am trying to find out from this witness when she was there.

The COURT.—You are speaking of three different periods; Mr. Dodge, the District Attorney's office, and some other time.

Mr. MARQUAM.—I will withdraw that question and ask another one.

Q. You say that you did tell Mr. Dodge that the

(Testimony of Mrs. Exena Herrington.)

first time that you had ever heard about Wooldridge having anything to do with your daughter, any improper relations, was after the girl had been up to the District Attorney's office. Did you tell Mr. Dodge that? Do you understand the question?

A. No.

Q. I will try to put it a little plainer. I understood you to say a little while ago and admit that after Mr. Dodge was talking to you about this matter, trying to find out what you knew about the case, that you told him, in answer to his questions, that you had never heard or known anything about Laura and Mr. Wooldridge having anything to do with each other until after Laura had been up to the District Attorney's office and came home. Did you tell him that? I understood you to say a while ago that you did. A. No.

Q. You didn't tell Mr. Dodge that? [416]

A. Mr. Dodge asked me—He asked me if Mr. Wooldridge—if I thought that Mr. Wooldridge is guilty. I said yes.

Mr. MARQUAM.—Just a minute. You can answer that. Go ahead and tell your version of it, what was said between you and Mr. Dodge.

A. He said—I told him that sometimes I think he is guilty, and sometimes I am not—that I can't think because I worry so.

Q. You told him that sometimes you think he was, and sometimes you think he was not? A. Yes.

Q. What else did you tell him, if anything?

(Testimony of Mrs. Exena Herrington.)

A. I told him what Laura told me, what she told me.

Q. Now, didn't you tell Mr. Dodge that you had never heard anything about Mr. Wooldridge and Laura having any improper relations with each other, or having been together as you express it, until after Laura had come from the District Attorney's office? Didn't you so tell him—Mr. Dodge?

A. Well, I told him—(interrupted).

Q. Just pardon me. Just answer the question yes or no. If you did tell him that, say yes; if you didn't, say no; then you will be permitted to explain afterwards. A. I don't remember if I did or not.

Q. You might have told him that?

A. I might, I don't remember.

Q. Everything you told Mr. Dodge at that time was true, was it? What I mean by that, Mrs. Herrington; you were [417] not trying to mislead Mr. Dodge; you were trying to tell him the truth as you knew it when you talked with him.

(Plaintiff's attorney objects as irrelevant, incompetent and immaterial, and not cross-examination. Objection overruled.)

Q. Do you understand the question? A. No.

Q. I will explain it in this way, Mrs. Herrington. When you were talking with Mr. Dodge, and he was asking you questions about this, you intended as far as you could to tell him the truth, did you?

A. Yes.

Q. And you did tell him the truth as far as you knew it? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. I will ask you one more question along this line. It is a little more specific than the other. Didn't you tell Mr. Dodge that Laura had never said anything to you about having anything to do with Mr. Wooldridge— A. Yes.

Q. —until after she came back from the District Attorney's office? A. Yes.

Q. You told Mr. Dodge that? A. Yes.

Q. That was true, was it? A. Yes.

Mr. MARQUAM.—That is all the cross-examination.

Mr. ROTH.—That is all. [413]

Testimony of J. P. Norris, for Plaintiff.

J. P. NORRIS, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. J. P. Norris.

Q. Where do you reside?

A. On Ester creek, 4 below.

Q. Were you a member of the late grand jury?

A. I was.

Q. What position did you occupy there?

A. Foreman.

Q. Do you know J. P. Rose?

A. I do.

Q. Did he appear before the grand jury as a witness in the case of United States against W. H. Wooldridge? A. He did.

Mr. MARQUAM.—(To Mr. Roth.)—Do you ex-

(Testimony of J. P. Norris.)

pect to offer evidence on the part of the witnesses to any testimony given before the grand jury?

Mr. ROTH.—Yes, sir.

(Mr. Marquam, for defendant, objects for the reason that it is incompetent, irrelevant, immaterial, an attempt to impeach their own witness; and for the special and specific reason that under the instructions of the Court given to the grand jury we are prohibited and deprived of the right of consulting and asking any grand juror as to anything that occurred in the grand jury-room.)

The COURT.—If you wish to make an argument, I will have the jury withdraw.

Mr. MARQUAM.—Yes.

(The Court admonishes the jury as usual, and orders them to withdraw to the jury-room, and they withdraw from the courtroom in charge of the bailiffs.) [419]

Mr. MARQUAM.—While the Court has instructed the grand jury and solemnly impressed upon them the necessity of keeping secret the proceedings before the grand jury, I dare say they have observed that injunction. I know that it is true, for the reason that last night it was reported to me as having come from the clerk of this court that grand jurors were going to be summoned to testify as to what occurred in the grand jury-room in regard to Mr. Rose's testimony; and upon the strength of that information, I knew not whether it was authentic or whether or not it was reliable, I met a couple of grand jurors and I asked them if they were at liberty, under their

(Testimony of J. P. Norris.)

instructions, to answer me what the testimony of Mr. Rose was before the grand jury, and they said no, they couldn't do it; and they wouldn't do it. Now, the District Attorney has all that information at hand, and he was present. He has the liberty of talking with every member of the grand jury as to what their recollections are. The Court would readily, from a practical standpoint, understand that where such a mass of testimony has come before the grand jury in the investigation of the offenses that have been investigated before the grand jury where indictments have been returned, that it is quite probable that no member of the grand jury's memory would be clear and distinct; it would be more or less hazy and vague;—some more distinct than others.

The COURT.—Just a minute.

Mr. MARQUAM.—It is true, your Honor—

The COURT.—Just a minute. A member of a grand jury, under the statute, may be required by any Court to disclose the testimony of a witness.

Mr. MARQUAM.—It is entirely in the discretion of the Court, under the circumstances of the case.

* * * [420] I say now that if, by an order of this Court, I can be placed in a position so that these men (grand jurors) will not be subect to contempt of court, so that they will feel at liberty to talk with me and answer such questions as they might answer with reference to Rose's testimony, I would have no objection. * * *

The COURT.— * * * It seems to me that it

(Testimony of J. P. Norris.)

is perfectly proper and the right thing to do for this grand juror to testify in this case; and your motion (to Mr. Marquam) will therefore be denied.

Mr. MARQUAM.—We except.

The COURT.—Exception allowed.

Mr. MARQUAM.—Would the Court make an order—(interrupted).

The COURT.—Before you make the request, anticipating what you will say, do you think for a moment that the Court would make such an order as you have indicated might be made? That certainly would be an abuse of discretion and unprecedented in the history of the trial of cases.

Mr. MARQUAM.—I don't think so. I didn't mean to say that they should be permitted to discuss generally the proceedings before the grand jury. I am simply talking about the testimony of a grand juror with reference to the testimony of Mr. Rose, that being the person who is being investigated.

The COURT.—The Court would never make such an order, unless it incorporated in the order that the grand juror and the one interrogating him would be in the presence of the Court, when the investigation was made.

Mr. MARQUAM.—We will submit to that.

Mr. ROTH.—I don't think the Court has any jurisdiction to make such an order.

The COURT.—Call the jury. [421]

(Jury returned into court, and trial resumed.)

Mr. ROTH.—Q. Mr. Norris, at the time that Mr. Wooldridge—I mean Mr. J. P. Rose—appeared

(Testimony of J. P. Norris.)

before the grand jury in the case in question, during this term of court, was Mr. Rose sworn to tell the truth, the whole truth and nothing but the truth—

A. He was.

Q. —by the foreman of the grand jury?

A. By the foreman of the grand jury.

Q. At that time did Mr. Wooldridge testify in substance—

A. Mr. Rose?

Q. I mean Mr. Rose, testify in substance as follows: “Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to, or gave me to understand that he wanted to have sexual intercourse with Laura, and that I answered and said: ‘I would not have anything to do with her until after the grand jury gets through. That the grand jury would get hold of a thing of that kind and would investigate it.’ And that I said, ‘It would not be safe,’ and I further said, ‘In order to get at that, they would take her up to Roth’s office, and then they would take her to one of the assistants, and then back down to the grand jury-room again, and they would sweat her until she would have to tell it’ ”?

(Mr. Marquam, for defendant, objects to the question and the testimony on the ground that it is incompetent, irrelevant and immaterial, for all the reasons suggested to the Court while the jury was absent, and for the further reason that the proper foundation for this impeaching question has not been laid. Objection overruled. Defendant asks and is given an exception.)

A. That is the substance of the evidence he gave

(Testimony of J. P. Norris.)

before the grand jury. [422]

Q. I will ask you further, Mr. Norris, if at that time and place, while he was under oath before the grand jury, he testified in substance as follows: "He (referring to W. H. Wooldridge), saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key"?

(Defendant objects to the question for the reason that it is incompetent, irrelevant and immaterial, and for the further reasons stated in the presence of the Court in the absence of the jury; for the reason that the proper foundation has not been laid for this as an impeaching question. Objection overruled. Defendant excepts, and is allowed an exception.)

A. Wooldridge asked Rose if that was not the key—

Q. Yes? A. —hanging on the wall—

Q. Yes? A. —of the door, the key to the door.

Q. Yes? A. Yes.

Mr. ROTH.—You may cross-examine.

Cross-examination.

By Mr. MARQUAM.—I now move that both of these questions and answers be stricken for the reasons assigned in the objections made.

(Motion denied. Defendant excepts. Exception allowed.)

Q. How many witnesses testified before the grand jury during the time that you were foreman of the grand jury?

(Plaintiff objects as irrelevant, incompetent, im-

(Testimony of J. P. Norris.)

material and not cross-examination. Objection sustained.)

Mr. MARQUAM.—Will the Court permit me to state the reason for the question? It is to test this witness' memory and recollection.

The COURT.—The Court has ruled on the matter.
[423]

Mr. MARQUAM.—I would respectfully request of the Court that when an objection is made of that kind that I be permitted to state, at least sustain my question by at least an explanation as to what the purpose of it is. I think that counsel have that right, at least, to be heard to that extent. We except to the ruling of the Court.

The COURT.—Exception allowed.

Mr. MARQUAM.—Q. It is true that very many witnesses, without naming them or without designating what cases they are in, many witnesses testified before the grand jury at that session of court which you have testified to?

(Plaintiff objects on all the grounds stated in the last objection. Sustained. Defendant excepts. Exception allowed.)

Q. When did Mr. Rose testify before the grand jury?

A. I couldn't say exactly, positively, but I think it was along about—let's see. We convened on the 8th. Along about the middle of the—I judge about Thursday, something like that, I think.

Q. I don't know what week you are talking about.

(Testimony of J. P. Norris.)

A. I think along about the 17th or 18th of the month.

Q. Have you refreshed your memory from any memoranda that you have made, since Mr. Roth has talked to you about being a witness in this matter?

A. I have.

Q. Did Mr. Roth, prior to your coming upon the stand, show you this written statement and read it over to you, or did you read it?

A. He read it to me and I asked him the date.

Q. When did he read it to you? [424]

A. To-day. I didn't arrive here until noon, about 12 o'clock.

Q. You were subpoenaed for this—(interrupted).

A. I was called in and subpoenaed after I got in.

Q. For the purpose of being a witness in this particular matter. A. I should judge so.

Q. From Ester Creek?

A. From Ester Creek, yes.

Q. And this statement that Mr. Roth had before him from which he read when he questioned you just now was read to you in his office just before you came on the stand, or some time to-day?

A. It was, yes, sir.

Q. Just tell this jury in your own language what Mr. Rose said in reference to this particular matter, and what he said Mr. Wooldridge said.

A. Well, now, to the best of my recollection—(interrupted).

Q. Let me inquire before you commence to testify, whether you are proposing to testify accurately, or

(Testimony of J. P. Norris.)

just give the substance of it. Can you give his language?

A. No, I can't give his exact language, but I can give the substance.

Q. What was the first question with reference to this matter that you asked Mr. Rose?

A. I didn't ask him any questions with reference to that. Do you want to know what Mr. Roth did?

Q. I want the first question that Mr. Roth asked him.

A. I wouldn't exactly say what the first question was, but I can give you, following the question, the answer—the answer more than I can the question asked; in other words, the answer that Mr. Rose gave. [425]

Q. Can't you remember what Mr. Roth asked him?

A. Not exactly, no; but I can give the answer.

Q. Do you remember the second question he asked him?

A. I can give the answer pretty near, that he made—the statement that he made.

Q. Can you tell this jury any question that Mr. Roth asked him?

A. Well, if I give the answer he made, it will almost signify the question.

Q. You just answer my question: Can you tell this jury any question that Mr. Roth asked him?

A. Well, now, let's see. Perhaps I can.

Q. Answer the question. If you can give one, give it.

A. No, I can't give the question.

Q. But when Roth asked you if that was the sub-

(Testimony of J. P. Norris.)

stance of his testimony—(interrupted).

A. I can, and I can repeat almost the substance of his testimony.

Q. And you stated it for that purpose—

A. No, sir, I have not.

Q. Can you give the testimony of every witness that came before the grand jury, in that way, too?

A. Almost—(interrupted).

(Plaintiff objects as irrelevant, incompetent, immaterial and not cross-examination. Objection sustained. Defendant excepts. Exception allowed.)

A. You see, can I say one question?

Mr. ROTH.—The objection is sustained.

Mr. MARQUAM.—Don't tell anything except what you are asked. A. That is all right.

Q. Can you give the testimony of any witness outside of Mr. [426] Rose that testified before the grand jury?

(Plaintiff objects on all the grounds last stated.)

Q. Are you able to do it? I am not asking you to give it.

(Plaintiff objects on all grounds stated in last objection.)

A. Yes.

Q. What is your business? A. A miner.

Q. You live out at Ester Creek?

A. I live on Ester Creek, 4 below, yes, sir.

Q. A married man? A. Yes.

Q. Son-in-law of Mr. Harris? A. Yes, sir.

Q. Mr. Harris is Mr. Deal's particular friend?

(Plaintiff objects as not cross-examination. Sus-

(Testimony of J. P. Norris.)

tained. Defendant excepts, and is allowed an exception.)

Q. When you were in town where did you stop while you were foreman of the grand jury?

(Plaintiff objects on the ground last stated. Sustained. Defendant excepts, and is allowed an exception.)

Q. I will ask you the leading question—(interrupted).

The COURT.—You need not ask the leading question if the leading question is to be founded upon the question to which the objection has been sustained.

Mr. MARQUAM.—I desire to show—(interrupted).

The COURT.—You may conduct your examination and cross-examination, and not something else.

Mr. MARQUAM.—I have a right to show this man's situation, his interest, his connections and his friendships, to show bias and prejudice.

(Argument, and the Court directs Mr. Marquam to come to the desk, with the stenographer and District Attorney, if he wishes to make an offer, and, thereupon [427] they go to the desk of the Court, where, out of the hearing of the jury, the following occurred:)

Mr. MARQUAM.—We offer to prove by the cross-examination of this witness, and by his own answers, that, during the time he was foreman of this grand jury, he lived with and continually associated with Mr. Thomas Deal, the Postmaster of the town of Fairbanks and a strong personal and political friend

(Testimony of J. P. Norris.)

of L. T. Erwin, United States marshal, whose chief deputy, at the morning session, testified that he had attempted to cause Mr. Wooldridge's removal from the employment of the Alaska Railroad Commission. We also desire to show by the cross-examination of this witness that he was told or informed by Mr. Deal, prior to the subpoenaing and summoning of the grand jury, that he, the said Deal, could get him on the grand jury, and would use his efforts so to do.

The COURT.—Is that your offer?

Mr. MARQUAM.—That is my offer.

The COURT.—Denied.

Mr. MARQUAM.—We save an exception.

The COURT.—Exception allowed. [428]

Testimony of H. N. Shead, for Plaintiff.

H. N. SHEAD, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Shead, were you a member of the grand jury for the regular February, 1916, term of this court?

A. I was.

Q. Were you present in the grand jury at the time that Mr. J. P. Rose appeared as a witness before that body? A. Yes, sir.

Q. State whether or not that Mr. Rose was regularly sworn to testify there.

A. I didn't catch the first part of that question.

Q. State whether or not Mr. Rose was regularly sworn to testify to the truth, the whole truth and

(Testimony of H. N. Shead.)

nothing but the truth before that body.

A. Yes. He was.

Q. By whom was he sworn?

A. By the foreman.

Q. The foreman of the grand jury?

A. The foreman of the grand jury, yes, Mr. Norris.

Q. At that time I will ask you to state whether or not Mr. J. P. Rose testified in substance as follows: "Wooldridge asked me about Laura while I was lying on the bed, and said he wanted to, or gave me to understand that he wanted to have sexual intercourse with Laura, and that I answered and said, 'I would not have anything to do with her until after the grand jury gets through; that the grand jury would get hold of a thing of that kind and investigate it,' [429] and that I said it would not be safe, and I further said, 'in order to get at that they would take her up to Roth's office, and then they would take her to one of the assistants, then back down to the grand jury-room again, and they would sweat her until she would have to tell it' "?

(Defendant objects to the question as irrelevant, incompetent and immaterial; that the proper foundation has not been laid; and for all the reasons presented to the Court in the absence of the jury in support of defendant's objection to the introduction of the testimony of the witness Norris. Objection overruled. Defendant excepts, and is allowed an exception.)

A. Yes, sir, he did.

Q. At that time and place did he further testify

(Testimony of H. N. Shead.)

in substance: "He," referring to Mr. Wooldridge, "saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key"?

(Defendant makes the same objection and the Court makes the same ruling and allows an exception.)

A. Yes, sir, he did.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. Mr. Shead, have you talked with the District Attorney about this subject of your testimony before coming into court, and if so, when?

A. Last evening.

Q. Did Mr. Roth read to you, or show to you this statement purporting to be signed by Mr. Rose?

A. No, sir he did not. [430]

Q. Did he read from it? A. No, sir.

Q. Where did you talk with Mr. Roth?

A. In the office in the store.

Q. Did he have a question written down?

A. At that time?

Q. Yes. A. No, sir.

Q. Will you tell the jury the question which you say he asked you when he came into the office in the store?

A. I don't know whether he asked me any questions or not at that time.

Q. You said you had a conversation there.

A. Yes, sir.

(Testimony of H. N. Shead.)

Q. It was for the purpose of ascertaining from you what Mr. Rose had testified to before the grand jury with reference to a certain subject, was it not?

A. Yes, sir.

Q. Now he necessarily would have asked you some question. Now what was it, if he did?

A. Well, I can't put that just that way.

Q. Well, if you remembered what Mr. Rose's testimony was before the grand jury?

A. I was in the front end of the store and he came in, and wanted to speak to me, and I said "Step in the office," and we went into the office there, and he was going to summons me as a witness, and I said "Yes, I knew that."

Q. How did you know it? [431]

A. Because Joe Miller had told me.

Q. Pardon me. Maybe we can simplify matters. Did Joe Miller have this statement? A. No, sir.

Q. Go ahead.

A. As near as I can remember of him asking me a question at all it was, if I knew the reply, Mr. Rose made in regard to having sexual intercourse with this girl.

Q. Whose question? In reply to whose question?

A. In reply to the question that was asked him in the grand jury-room.

Q. By whom?

A. Well now, I don't know. He didn't state by whom or anything of that kind. I don't know whether it referred to a question he asked him, or the foreman of the grand jury.

(Testimony of H. N. Shead.)

Q. You understood Mr. Roth asking you what Mr. Rose had said about Wooldridge telling him about having had sexual intercourse with this girl.

A. I understood Mr. Roth to ask me if I knew Mr. Rose's reply to the question when it was asked him.

Q. What question?

A. As to Wooldridge having sexual intercourse with this girl.

Q. Did Mr. Roth put it that way?

A. I don't think he did in those words.

Q. I want to get—(interrupted).

A. That was only last night. That was last night.

Q. When was it that you listened to the testimony of J. P. Rose in the grand jury?

A. Two or three weeks ago.

Q. Necessarily your recollection of Mr. Roth's question last [432] night would be keener in your memory than the question that was asked and answered two or three weeks ago, wouldn't it, Mr. Shead?

(Plaintiff objects as irrelevant, incompetent, immaterial and argumentative. Objection sustained. Defendant asks and is given an exception.)

Q. I will ask you this question: Aren't you able more clearly to recollect what Mr. Roth asked you last night, and what you said, than what was asked Mr. Rose, and what he said two or three weeks ago?

A. I think I can recollect both of them. As far as that is concerned, I don't think he asked me a direct question.

Q. Well, what do you mean by a direct question?

(Testimony of H. N. Shead.)

A. I don't think he asked me right out that same question that you asked me about there.

Q. All right. I don't know what he asked you or what you said. All I want to know is to find out last night what he asked you, what he asked you, what question he asked you, and what answer you gave him at that time?

The COURT.—The witness has twice told you that he didn't think he asked him a direct question.

Mr. MARQUAM.—Then, an indirect question.

Q. Did he ask you an indirect question?

A. Then we talked for a minute, and he wanted to know what I remembered about his testimony.

Q. All right. You just tell this jury what you told him at that time.

A. Well, I reviewed the testimony as well as I could.

Q. What did you say?

A. I said that Rose testified that this man came in there where he was lying on the bed reading; this man walked back [433] and gave him to understand that he had a date there with this girl. Then there was something said in reference to a key. And then Rose asked him if he was to meet this girl there, and told him that he was putting himself in a bad position, because the grand jury was in session at that time.

Q. That is your independent recollection of what that testimony was before the grand jury?

A. Up to that point, yes, sir.

Q. Up to that point. Was there more of it?

(Testimony of H. N. Shead.)

A. Then Mr. Roth and I talked that over.

Q. But that was your answer to Mr. Roth last night? A. Yes, sir.

Q. Is that your recollection now as to just what was said by Mr. Rose with reference to that subject in the grand jury-room?

A. As far as that, it was, up to that point.

Q. What was his further testimony with regard to that subject in the grand jury-room? You say "up to that point." Now if he went further upon that particular subject, what was that?

A. He had admitted that he had made an appointment with this girl there at that time.

Q. You have already testified to that.

A. Then Mr. Roth put this question to him in some certain way, some such a way as that from memory.

Q. You are telling now what occurred in the grand jury-room, from your recollection, are you?

A. No. This is what occurred last night.

Q. All right. Go ahead. [434]

A. That was all there was of it.

Q. That was all there was of it? A. Yes.

Q. Now, did you—What you told Mr. Roth at that time was your best independent recollection of just what Mr. Rose had testified to, was it, with regard to this particular subject—the girl being in the shop—meeting the girl in the shop?

A. I don't know as it was my best. It was pretty close to it.

Q. Is that your best recollection now as to what Mr. Rose testified to before the grand jury?

(Testimony of H. N. Shead.)

Mr. ROTH.—On this one subject—

Mr. MARQUAM.—Be still, Mr. Roth.

Mr. ROTH.—If the Court please—(interrupted).

Mr. MARQUAM.—I object to Counsel interrupting me in my examination.

Mr. ROTH.—I object to the question unless it is limited to the identical point in this question.

The COURT.—You may answer the question if you remember it. A. What is the question?

Q. (Last question read by reporter.)

A. In reference to that point there?

Mr. MARQUAM.—Q. With regard to the girl and Mr. Wooldridge, and what was said by Mr. Wooldridge while Rose and he were talking in his shop.

Mr. ROTH.—We object to that as irrelevant, incompetent, immaterial, and not cross-examination, because it is not confined to the subject testified to by the witness.

The COURT.—It must be limited to the subject.

Mr. MARQUAM.—That is the subject. [435]

The COURT.—The question which you asked could be answered by the witness without going over a whole lot of other things.

Mr. MARQUAM.—I limited it with regard to Wooldridge and the girl.

The COURT.—With regard to the subject matter of the question which was propounded.

Mr. MARQUAM.—I will qualify it in that way.

Q. With regard to the subject matter contained in the leading question which Mr. Roth propounded to you, is that what you have testified—got through tes-

(Testimony of H. N. Shead.)

tifying about? Is that your entire, best, and clearest recollection of what was said by Mr. Rose?

A. I knew that this question had been asked, but I couldn't remember the question or the form that that question was asked in. This question that was asked of him it was asked before the grand jury.

Q. That question? A. Yes, sir.

Q. In those identical words?

A. I can't tell that it was in the identical words or not. I couldn't remember that.

Q. What do you mean by "that question was asked of him in the grand jury-room"?

A. I mean that that question was asked of Mr. Rose in the grand jury-room in sum and substance, was put to him, that he had an appointment with this girl there for the purpose of having sexual intercourse with her, and Mr. Rose admitted that Mr. Wooldridge—Mr. Rose said Mr. Wooldridge had admitted that to him. [436]

Q. Had admitted it to him?

A. He said it was right, yes.

Q. What else? We are getting a little different story now. Go ahead and finish your answer.

A. That is the answer to it.

Q. That is your best recollection of it?

A. Of what took place in the grand jury-room, yes.

Q. What was said in the grand jury-room with regard to this subject that is contained in the question which Mr. Roth propounded to you, is that true?

A. Mr. Rose admitted it.

(Testimony of H. N. Shead.)

Q. Admitted what? A. That they were true.

Q. That what were true?

A. Those questions that were asked him.

Q. That is what I would like to get at: Just what questions were asked him. Can you tell?

A. The questions that were embodied in that that Mr. Roth read there.

Q. And those questions that are embodied in that paper that Roth read to you were asked of him in the grand jury-room?

A. The sum and substance of it, yes, sir.

Q. Don't you know Mr. Shead—Do you know what that paper is— A. No, sir.

Q. —that he read from? A. No, sir.

Q. You don't know anything about it. You don't know what it is. Did you ever see it before?

A. I haven't seen it now.

Q. You might not see it now, and have seen it before. [437]

A. No, I never saw it before.

Q. The truth of the matter is that you have a recollection of the testimony of Mr. Rose before the grand jury upon this question, and you have heard dozens and dozens of questions there, and you have a recollection of it in substance, but you don't pretend to be able to repeat to this jury what questions were asked and just how they answered them.

A. Word for word? Not word for word.

Q. Or the whole substance. You would not try to say that you could do that.

A. Well, I tried to say that I could answer the substance of those questions there that were asked of

(Testimony of H. N. Shead.)

him—his answers to the substance of those questions there.

Q. You don't pretend to tell this jury that your recollection is so keen and accurate that you can tell what every witness before the grand jury testified to accurately, even in substance what any particular question was.

(Plaintiff objects as irrelevant, incompetent, immaterial and not cross-examination. Objection sustained. Mr. Marquam states that it is for the purpose of testing this witness' memory, and asks and is given an exception.)

Mr. MARQUAM.—That is all.

Redirect Examination.

(By Mr. ROTH.)

Q. Mr. Shead, Mr. Marquam asked you about questions that were propounded, and asked you this question:—No. Do you remember whether or not I had a paper there that Mr. Rose stated was his statement, at the time I questioned him? [438]

A. In the grand jury-room?

Q. Yes.

(Defendant objects as incompetent, irrelevant, immaterial, hearsay, and no foundation having been laid for the question. Objection overruled. Defendant asks and is given an exception.)

A. I remember he had a paper there and read that question from it.

Q. And do you remember whether or not Mr. Rose stated that that was his statement? A. Yes, sir.

(Defendant objects on the same grounds last

(Testimony of H. N. Shead.)

stated. Objection overruled. Defendant excepts and is allowed an exception.)

Mr. ROTH.—That is all.

Mr. MARQUAM.—That is all.

Testimony of R. M. Crawford, for Plaintiff.

R. M. CRAWFORD, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Crawford, were you a member of the grand jury of the regular February, 1916 term of this court?

A. I was.

Q. What position did you occupy as a member of that grand jury? A. I was secretary.

Q. Do you know J. P. Rose? A. I do.

Q. Did J. P. Rose appear as a witness before the grand jury in the case of The United States against W. H. Wooldridge? A. He did.

Q. Was he regularly sworn to testify? [439]

A. He was.

Q. By whom? A. By the foreman.

Q. At that time did he testify in substance as follows: Wooldridge asked me about Laura while I was lying on the bed and said he wanted to, or gave me to understand that he wanted to have sexual intercourse with Laura, and that I answered and said, "I would not have anything to do with her until after the grand jury got through. That the grand jury would get hold of a thing of that kind and would

(Testimony of R. M. Crawford.)

investigate it, and that I said: "It wouldn't be safe," and I further said "In order to get at that, they would take her up to Roth's office, and then they would take her to one of the assistants, and then back down to the grand jury-room again, and they would sweat her until she would have to tell it"?

(The defendant objects as irrelevant, incompetent and immaterial, and also for all of the reasons assigned in the absence of the jury to the questions propounded to the witness J. P. Norris, and for the further reason that the proper foundation for the introduction of this testimony has not been laid. Objection overruled. Defendant excepts and is allowed an exception.)

A. Yes. In substance.

Q. And did he further at that time testify in substance: "He, referring to Mr. Wooldridge, saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key"?

A. Yes. In substance.

Mr. ROTH.—You may cross-examine. [440]

Mr. MARQUAM.—We move that both of these questions and answers be stricken for the reasons already assigned.

The COURT.—Motion denied and exception allowed.

Cross-examination.

(By Mr. MARQUAM.)

Q. All you can say is that that is the substance, or part of the substance, or maybe all of the substance

(Testimony of R. M. Crawford.)

of the testimony that you heard before the grand jury?

A. You mean J. F. Rose's testimony. That is part of the substance of J. P. Rose's testimony. Yes.

Q. You listened to the testimony of a great number of witnesses, did you not, before the grand jury?

(Plaintiff objects as irrelevant, incompetent and immaterial, and not cross-examination. Objection sustained. Defendant excepts and is allowed an exception.)

A. (No answer.)

Q. When was this testimony given?

A. It was given while the grand jury was in session, with reference to investigating the case of Mr. Wooldridge.

Q. When was that? A. What date?

Q. Yes.

A. Why, I don't remember. We met on the eighth and we run along until—we sat twenty-one days, and it was—but just what day that testimony was given, I don't remember.

Q. Did I understand you to say you were secretary of the grand jury?

A. Yes: If that is the proper title for it. [441]

Q. Well, did you make notes of the testimony, as such secretary?

A. I made some notes. I didn't make full notes at all, because I am not a shorthand reporter.

Q. Are those notes destroyed?

A. I don't know. I turned them over to Mr. Roth.

Q. At the conclusion of the—(interrupted).

(Testimony of R. M. Crawford.)

Mr. ROTH.—I have the notes.

Mr. MARQUAM.—I would like to have those notes produced.

Mr. ROTH.—I don't object to it.

Mr. MARQUAM.—With reference to this only: about this question now under investigation.

The COURT.—Very well.

Mr. ROTH.—I won't object to it at all.

(Here the Court takes a short recess until four P. M. and after recess, defendant and jury being present, the trial was resumed.)

Mr. ROTH.—I want to give it to him and have him read on this point. (Referring to witness.)

Mr. MARQUAM.—I ask that the notes be produced.

Mr. ROTH.—I refuse to produce the notes. I will hand them to the witness.

Mr. MARQUAM.—I object to these notes being handed to the witness. I want to inspect those notes.

Mr. ROTH.—You can't inspect them right now.

Mr. MARQUAM.—I can if the Court will let me.

Mr. ROTH.—I don't think the Court will let you, because there are other things there that are not permissible.

Mr. MARQUAM.—Take the scissors and cut them off then.

(The Court examines the notes referred to, calls Mr. Roth and Mr. Marquam to his desk, and they examine the portion of said notes indicated by the Court.) [442]

(Testimony of R. M. Crawford.)

Mr. MARQUAM.—Do you desire to have the witness identify them?

The COURT.—Yes.

Mr. MARQUAM.—Is that all there is, from your inspection of them, upon that matter?

The COURT.—Yes.

Mr. MARQUAM.—Probably Mr. Crawford will know about that. (Papers referred to handed to the witness.)

Q. Are those notes? A. They are.

Q. Were those made by you at the time the testimony was given? A. They were.

Q. And it is as near—would you say that that statement written there, you would rely more upon than your own memory unrefreshed by it?

A. It is good as far as it goes, Mr. Marquam. I was endeavoring to take down some notes, and at the same time since the man talked reasonably rapidly, and I wrote fairly slowly I only got a portion.

Q. As far as it goes—(interrupted).

A. As far as it goes, it is true.

Q. As far as it goes, it would be in your opinion more accurate than your memory of the incident at that time.

A. Yes, except I possibly briefed them up. I would make a brief mention of something that would cover a good many words. I would put it in my own language briefly so as to keep just simply a note. (Said notes are handed to the Court.)

Q. Let me ask you: When Mr. Roth talked to you

(Testimony of R. M. Crawford.)

about this matter, where did you see Mr. Roth?
[443]

A. I saw him in his office about a quarter of two to-day.

Q. And what was said?

A. He read a question that he was going to ask me in court this afternoon.

Q. From a typewritten piece of paper?

A. Yes, from a typewritten piece of paper.

(Mr. Dodge examines the notes of the witness heretofore referred to, or the portion of them indicated to him by the Court.)

Q. Was this in Mr. Roth's office?

A. Yes. In Mr. Roth's office.

Q. What paper was it read from? Was it read from a typewritten sheet?

A. Yes. Read from a typewritten sheet.

Q. And you meant to say, in regard to your answer to that question, that that, from your recollection, was the substance of what was stated?

A. That is all. Yes, sir.

Q. I presume it would have been very difficult for you, if not asked and read from a paper if that was the substance, to have repeated all that particularly from memory, would it not?

A. I probably would have used my own language. A person will in stating what was said. And it wouldn't have been in those words, perhaps.

Mr. MARQUAM.—We would like to read those notes to the jury on that particular subject. I don't care—if Mr. Roth is afraid they will get away from

(Testimony of R. M. Crawford.)

him, I don't want to introduce the paper, but I would like to have it read, and we can substitute a copy of it.
[444]

Mr. ROTH.—Just on this one point.

Mr. MARQUAM.—For what it is worth. I take it the jury would have more reliance upon these notes than they would upon oral testimony.

The COURT.—Mr. Stewart, you may read all you can find on this page (indicating). Down to where it is turned down.

SIDNEY STEWART, Deputy Clerk, reads as follows: "9th day. J. P. Rose." That is away up in the corner, evidently the page. "Sworn. Runs repair shop. Saw Laura Herrington and Wooldridge at my shop a little before eight o'clock night before last. Wooldridge said 'are you going to the picture show'; I said 'No.' We talked about Laura Herrington being wild. He intimated to me he would have sexual intercourse with her. I told him it was a very unsafe thing to do. She said 'It is an unsafe thing to do. Someone is following me.' Then I went out and saw deputy marshals everywhere; went back and told her to get out. Monday evening Wooldridge asked me to buy him a fifty-cent bottle of whiskey. I did."

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

(Here the Court takes a recess until four-fifteen P. M. to-day, and the jury, after being admonished by the Court withdraw from the courtroom. At four

(Testimony of R. M. Crawford.)

P. M. jury returned to the courtroom, and the defendant and the attorneys being present, the trial was resumed.) [445]

Testimony of Tom Utigaard, for Plaintiff.

TOM UTIGAARD, a witness for plaintiff, after being duly sworn testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Utigaard, were you a member of the grand jury— A. Yes, sir.

Q. —that sat for this term of court, this February, 1916 term of this court? A. Yes, sir.

Q. Were you present at the grand jury when J. P. Rose testified in the case of the United States against W. H. Wooldridge? A. Yes, sir.

Q. Was Mr. Rose regularly sworn?

A. Yes, sir.

Q. By whom? A. By Norris, the foreman.

Q. At that time did Mr. Rose testify in substance as follows: "Wooldridge asked me about Laura while I was lying on the bed and said he wanted to, or gave me to understand, that he wanted to have sexual intercourse with Laura, and that I answered and said 'I would not have anything to do with her until after the grand jury gets through; that the grand jury would get hold of a thing of that kind and would investigate it,' and that I said 'It would not be safe,' and I further said 'In order to get at that, they would take her up to Roth's office, and then they would take her to one of the assistants, and then back down to

(Testimony of Tom Utigaard.)

the grand jury-room again, and they would sweat her until she would tell it." [446]

(Defendant objects as incompetent, irrelevant and immaterial, for all the reasons assigned to the Court in the absence of the jury against the admission of the same question propounded to J. P. Norris and the answer thereto: for the further reason that the proper foundation has not been laid for such impeaching question. Objection overruled. Defendant excepts. Exception allowed.)

A. He said that.

Q. Did he further testify at that time in substance as follows: He, referring to W. H. Wooldridge, saw a key on the wall and asked me if that was the key to the building, and I told him that was the front door key? A. Yes. He said that.

Mr. MARQUAM.—He answered the question before I could object.

Mr. ROTH.—We will stipulate that your objection may go to this.

The COURT.—The record may show that you made the same objection, and the same ruling, and an exception allowed.

Mr. ROTH.—That is all.

Cross-examination.

(By Mr. MARQUAM.)

Q. Were those questions read to you, Mr. Utigaard, just before coming into court, or some time yesterday? A. No. Not those.

Q. What is that? A. Yes. They was.

(Testimony of Tom Utigaard.)

Q. What did you first say?

A. I said I didn't understand. Well, I said no, but—

Q. You didn't understand the question?

A. Yes.

Q. But now you say yes? A. Yes. [447]

Q. Who by?

A. Mr. Roth asked me if I remembered what Rose said in the courtroom?

Q. Did you remember? A. Yes.

Q. Clearly? A. Yes, I did.

Q. Where were you when he questioned you?

A. He was down in his office.

Q. Up in his office here? A. Yes, sir.

Q. He sent for you and you came up there?

A. Yes, sir.

Q. He then read that question to you—those questions? A. He did.

Q. Or those statements? A. Yes.

Q. Did you say that you did recollect clearly—

A. No.

Q. —what Mr. Rose had testified to prior to his reading those questions to you?

A. I said I recollected correct what he said.

Q. Clearly? A. Yes, sir.

Q. Did you tell this in your own way, and in your own language, what Mr. Rose had testified to, to Mr. Roth? A. No, sir.

Q. He immediately then read those questions?

A. Yes, sir. [448]

Q. And that struck you as about what he testified

(Testimony of Tom Utigaard.)

to? A. Yes, sir. I remember that.

Q. What?

A. I remember distinctly that it was the same.

Q. Just tell the jury what he did testify to.

A. Well, he testified that he said that Wooldridge came in there about around eight o'clock, and he said that he was laying on the bed in the back room, and he, Wooldridge, came in, and he said "You are pretty extravagant for you use the light this time of night. It is after eight o'clock." And he just turned back and turned out the light in the front room, and he came back, and he said he spoke to Rose about Laura Herrington was going to be there that night.

Q. That is, he said that Wooldridge told him that Laura Herrington was going to be there that night.

A. Yes, sir. And he also said, "Don't you use to go to the picture show once in a while?" "Yes," he said, "I do." "Well," he said, "I thought you were going on Monday or Thursday," or something to that effect, and I don't really recollect or really remember what date it was, but it was a couple times a week. And so he—well now—so Laura came in, he told, and she came right back to where they was, and Wooldridge got up and meet her, I don't know whether it was in the door, or outside or inside the door to the back room, and they spoke a few words loud—low there, so Rose said he didn't know what was said.

Q. He didn't know what was said?

A. No. He said they spoke some low words there, but he didn't know what was said. Then Wool-

(Testimony of Tom Utigaard.)

dridge turned around to Rose [449] and said "There is somebody following her." Then so, Rose he said that he got up and put his coat on and went out, and when he came out he said he turned back and spoke to Wooldridge back in through the door and he said, "I should say there is somebody following you. All the deputy marshals in town are here."

Q. That is the substance now—

A. That is about—

Q. Now you are testifying from your own memory—

A. Yes, sir.

Q. —what Mr. Rose said at that time?

A. Yes, sir.

Mr. MARQUAM.—That is all?

WITNESS.—And he furthermore asked about a key there, and that key is supposed to belong to the front door. It was hanging on the wall some place you could see from the bed.

Q. You have given now the substance as you remember it of all of Mr. Rose's testimony relative to his conversation with Mr. Wooldridge about the girl—

A. Yes.

Q. —while they were in his shop?

A. Yes. Just about.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all. [450]

Testimony of W. W. Pendergraft, for Plaintiff.

W. W. PENDERGRAFT, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. Mr. Pendergraft, were you a member of the late grand jury which convened here in this term of court, the regular February, 1916, term of court?

A. I was.

Q. Were you present in the grand jury room at the time J. P. Rose came there and testified?

A. I was.

Q. Was J. P. Rose regularly sworn at that time?

A. He was.

Q. By whom?

A. By the foreman of the grand jury, Mr. Norris.

Q. After he had been sworn there did he testify in substance as follows: Wooldridge asked me about Laura while I was lying on the bed, and said he to, or gave me to understand that he wanted to have sexual intercourse with Laura, and I answered and said, "I would not have anything to do with her until after the grand jury got through; that the grand jury would get hold of a thing of that kind and would investigate it," and that I said, "It would not be safe," and I further said "In order to get at that, they would take her up to Roth's office, then they would take her to one of the assistants, and then back down to the grand jury room, and they would sweat her until she would have to tell it?"

(Testimony of W. W. Pendergraft.)

(Defendant objects as incompetent, irrelevant and immaterial, that the proper foundation has not been laid for such impeaching question, and for all the reasons assigned as to the inadmissibility of this testimony in the absence of the jury. Objection overruled. Defendant asks and is given an exception.) [451]

Q. Answer the question.

A. You want to know if I heard him answer that question or those questions?

Q. If that was his testimony in substance?

A. Yes.

Q. Did he further testify at that time in substance: He, referring to W. H. Wooldridge, saw a key on the wall, and asked me if that was the key to the building, and I told him that was the front door key.

(Defendant offers the same objection, and the Court makes the same ruling and allows an exception.)

A. He did.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. Now, you say that he did. What do you mean by that answer, Mr. Pendergraft?

A. Well now, do you want me to tell you just what Mr. Rose or Mr. Wooldridge said about this key according to Mr. Rose's testimony? Is that what you want?

(Testimony of W. W. Pendergraft.)

Q. You said "he did." I just want you to say in your own language what you meant by that answer.

A. I meant that he spoke of a key being on the wall, wanting to know if that was the key to the front door, or to the door around there, I wouldn't say that exactly "front door" but "to the door."

Q. You meant to say by "he did" that he had testified as Mr. Roth had put the question to you; that it was true that this question that Mr. Roth put to you represented to your mind the answer which Mr. Rose had made to the questions [452] that were put to him before the grand jury. Do you understand that?

Mr. ROTH.—In substance.

Mr. MARQUAM.—I wish you would leave this witness alone.

Mr. ROTH.—That was the question, if your Honor please. The question was asked if that was in substance his testimony.

(Objection sustained. Defendant excepts and is allowed an exception.)

Mr. MARQUAM.—Q. Then explain what you meant by your answer "I did" or "he did."

A. I believe I did explain. You want me to re-explain?

Q. I don't think you explained it, Mr. Pendergraft. You may not understand what I am asking you, but I have tried to make it clear, but there is an exception interposed, so I will have to ask the question of you to explain what you meant by the answer "he did."

(Testimony of W. W. Pendergraft.)

A. That he did ask me about a key that was hanging on the wall, if that was—belong to the door. That is the way I would take it as Mr. Roth has placed it.

Q. Did you talk with Mr. Roth prior to coming into the courtroom, that is, since yesterday?

A. Yes.

Q. Where?

A. I talked with him in the office, and I talked with him over in my store.

Q. Since yesterday?

A. Not since yesterday. No, sir. I talked with him in his office since yesterday. Yes, sir.

Q. When did you talk with him in the store?

[453]

A. Last evening.

Q. About this same proposition?

A. About this same proposition.

Q. What did Mr. Roth first ask you, Mr. Pendergraft?

A. He asked me if I remembered about Mr. Rose's testimony before the grand jury.

Q. What did you tell him?

A. I told him I remembered a portion of it.

Q. Did he have any paper with him at that time?

A. I don't know. He didn't show any to me. He didn't present any to me.

Q. Did you repeat to him at that time what Mr. Rose's testimony was before the grand jury?

A. I did, sir.

(Testimony of W. W. Pendergraft.)

Q. What did you tell Mr. Roth at that time that Mr. Rose's testimony was?

A. I told him, as I remembered it just at the time, about Mr. Wooldridge coming into the building, turning the light as he came through the front room, coming back and saying to Mr. Rose that he was rather extravagant having the lights turned on at that time of the night.

Q. Pardon me. I want to interrupt you. Is this what you told Mr. Roth last night at your store?

A. I was repeating to him what I remembered of the proposition.

Q. Go ahead.

A. Then I told him about Mr. Wooldridge speaking to Mr. Rose in regard to this Laura Herrington as I remembered it, and about his answer in regard to the grand jury, and about getting her into the prosecuting attorney's office, and the [454] marshal's office and before the grand jury and so on, and in regard to the key.

Q. Well, now, did you understand Mr. Rose's testimony with regard to what Wooldridge had said to him and he had said to Wooldridge as occurring before Laura Herrington came into the store?

A. What they had to say occurred before Laura Herrington came into the store, as I understand it.

Q. Now just tell the jury what Wooldridge said about Laura Herrington.

The COURT.—You mean what Rose said, don't you?

Mr. MARQUAM.—What Rose said that Wool-

(Testimony of W. W. Pendergraft.)

dridge said. In other words, state, as you remember it, Rose's testimony before the grand jury with reference to what Wooldridge said.

A. Wooldridge came in and he spoke to Mr. Rose in regard to—first, about going to the theatre, as I believe, was his remarks as I remember them; and then spoke to him about Laura Herrington, meeting her there, and Mr. Rose—

Q. Are you using Mr. Rose's language at that particular point?

A. I am using Mr. Rose's language, but I use Mr. Rose's name so as to distinguish him. He was saying—

Q. Pardon me for having interrupted you.

A. He stated to Mr. Wooldridge that it would be very dangerous at this time to be fooling around with this little girl; that the grand jury was in session—

Q. Just before that. I want you to tell the jury again just what Mr. Wooldridge was supposed to have said to Rose, that is according to Rose's testimony, which led up to the statement on the part of Rose that it was dangerous [455] proposition, or whatever it was. Do you understand the question?

A. Why, I understand the question. I thought I was answering it.

Q. Would you just, so as to make it clear, just answer it again?

A. You want me to repeat myself, do you? Is that the idea?

Q. You can call it that. Yes.

(Testimony of W. W. Pendergraft.)

A. Do you want me to go back and repeat myself?

Q. No. Just the remark Wooldridge was supposed to have made, according to Rose's testimony. That is all I care for.

A. Mr. Wooldridge made the remark to him in the first place, as I remember it—it is a hard matter to get everything just in detail as it came along—but he remarked about his going to the theatre, then spoke to him in regard to this little girl meeting him there, and Mr. Rose—

Q. Now, you are through with what Wooldridge said, are you? A. Yes, sir.

Q. All right. Go ahead.

A. You want the rest of it?

Q. I want then what Mr. Rose said.

A. Mr. Rose just stated to him that it would be a dangerous thing for him to be fooling with this little girl at that time, owing to the fact that the grand jury was in session.

Q. Is that all?

A. Then he walked over, as I remember it, to a key hanging on the wall, or on the jamb of the door, something like that, and asked him if that was the key to the door—

Q. Picked it up?

A. It was hanging up, as I remember the testimony, on the wall [456] or on the jamb of the door, somewhere right in the room, and asked him if that was the key to the door.

(Testimony of W. W. Pendergraft.)

Q. Did Rose say he had taken it off the hook or nail?

A. I wouldn't say that it was taken off the nail at all. I don't remember of that being stated.

Q. This was all said before Laura Herrington came in?

A. That was before Laura Herrington came in.

Q. And there was nothing in the way of Mr. Rose's testimony as to what Wooldridge and he had said of this character after the girl came in?

A. No, sir. There was not.

Q. I suppose it is very difficult, Mr. Pendergraft, for you to recollect accurately the testimony given by any witness before the grand jury at this time?

A. In fact, it would be for anyone, I think to get everything accurate by any means.

Q. You are just trying to do the best you can and give the jury the best impression, you might call it, of what occurred there?

A. I ain't caring anything about the impression to the jury. I am trying to tell the jury as I know it of what occurred.

Q. You don't understand me. I don't mean that you are trying to create an impression upon the jury, but you are giving the jury your best impression—I call it impression—or recollection of what you heard Rose say.

A. That is what you wanted, ain't it?

Q. If you will answer my questions instead of arguing with me. Is that true?

A. I am trying to tell you the truth.

(Testimony of W. W. Pendergraft.)

Q. I realize that. I think we all believe that, but we have [457] got to get that before the jury, the questions which I will ask you and your answers. I ask you, and I will ask you again, if the testimony which you have given in this matter at this time, with regard to the conversation which occurred in the grand jury room on the part of Mr. Rose is your best impression and recollection of what was said at that time?

A. I have no impression about it at all.

Q. You haven't any impression at all. Well, what are you giving?

A. I am giving testimony of what Mr. Rose stated before the grand jury.

Q. In the words that he gave them?

A. As near as I can possibly remember them.

Q. That may be true. How near is that?

(Plaintiff objects as irrelevant, incompetent and immaterial and argumentative. Objection sustained. Defendant excepts and is allowed an exception.)

Q. In other words, you are trying to tell the best that you can, giving your best remembrance of it.

Mr. ROTH.—We object—(interrupted).

A. That is all.

Mr MARQUAM.—Q. That is all I am asking you about. You seem to think that I am trying to get you to admit that you are putting the best phase on it, but that is not it at all. That is all.

(Testimony of W. W. Pendergraft.)

Redirect Examination.

(By Mr. ROTH.)

Q. I will ask you to state whether or not you re-collect that there was a paper exhibited by me to Mr. Rose at that time when I questioned him. [458]

A. There was. At least you had one in your hand and read it off to him.

Q. What did Mr. Rose say that that was, that paper that I read, if you remember?

(Defendant objects as leading. Objection overruled. Defendant excepts. Exception allowed.)

A. Well, I can hardly explain just what you—(interrupted).

Q. Did Mr. Rose recognize the paper that I read from, or did he say anything about it?

(Defendant objects as leading. Objection overruled. Defendant excepts. Exception allowed.)

A. He recognized the reading of that paper. Now, there is a little technicality in your question there Mr. Roth, as far as that paper is concerned, but the contents of it he did acknowledge.

Mr. ROTH.—That is all.

Mr. MARQUAM.—That is all.

Testimony of J. J. Buckley, for Plaintiff.

J. J. BUCKLEY, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What official position do you now hold, Mr. Buckley?

(Testimony of J. J. Buckley.)

A. City Clerk of the Town of Fairbanks, Magistrate, and Chief of the Fire Department.

Q. As city clerk, are you in possession of the city records? A. Yes, sir.

Q. Have you the records of the last registration for city election? [459] A. Yes, sir.

Q. Will you turn to the registration of W. H. Wooldridge, if you have it there?

Mr. MARQUAM.—I would like to know the purpose of this, so that we can offer an objection.

The COURT.—You may state the purpose. (To Mr. Roth.)

Mr. ROTH.—I want to show the age of Mr. Wooldridge.

Mr. MARQUAM.—All right.

Mr. ROTH.—Q. Have you a record of his registration? A. Yes, sir.

Q. Was that signed by Mr. Wooldridge?

A. Yes, sir.

Q. Was it sworn to by him before you?

A. Yes, sir.

Q. What is the date of that certificate or that oath? A. The sixth day of November, 1915.

Q. Does that give the age of Mr. Wooldridge?

A. Yes.

Q. What age does it give? A. Fifty-one.

Mr. ROTH.—You may cross-examine.

Mr. MARQUAM.—No cross-examination. [460]

Testimony of Frank B. Hall, for Plaintiff.

FRANK B. HALL, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. Frank B. Hall.

Q. What official position do you hold?

A. Deputy United States Marshal.

Q. Mr. Hall, as such deputy were you instructed to go to the office of Mr. L. K. Pratt during the month of February of this year? A. Yes, sir.

Q. Do you know the date? A. Yes, sir.

Q. What date? A. February the fifteenth.

Q. About what time did you go there?

A. At six-thirty in the evening.

Q. Who was with you? A. Peter McMullen.

Q. Also a deputy marshal? A. Yes, sir.

Q. While you were in there did you see this defendant, W. H. Wooldridge?

A. Yes, sir. Outside.

Q. Where did you see him?

A. Right near the bath-house, on the corner.

Q. Where did he go then?

A. He was coming from down Lacey Street, and when he got to the [461] corner he turned and went into Mr. Dodge's office.

Q. What time was that?

A. That was about twenty minutes to eight.

Q. Did you see him come out of there?

A. I did.

(Testimony of Frank B. Hall.)

Q. What time did he come out of there?

A. It was about twelve minutes to eight.

Q. Where did he go?

A. He went directly across the street, right over to the bath-house, and then he went into Mr. Rose's machine-shop.

Q. Known as Rose's repair-shop? A. Yes, sir.

Q. Do you know Laura Herrington?

A. I know who she is, yes, sir.

Q. Did you see her while you were in Mr. Pratt's office? A. I did, yes, sir.

Q. Where did you see her?

A. She turned the corner of Second at about eight o'clock, turned the corner of Second and went down Lacey toward Mr. Rose's machine-shop.

Q. And where did she go?

A. And went inside—first she went by the place, and then turned around and came back and went in.

Q. What do you say it was that she went in there?

A. Eight o'clock.

Q. Just about eight o'clock? A. Yes, sir.

Q. What did you observe after they went in there?

A. Immediately after she went in—(interrupted).

Q. What did you observe after—(interrupted).

[462]

Mr. MARQUAM.—Let him finish his answer.

Mr. ROTH.—Q. Immediately after Mr. Woolbridge went in there, did you observe anything?

A. Yes.

Q. What? A. The light went out.

(Testimony of Frank B. Hall.)

Q. After she went in there did you observe anything?

A. Nothing about the front of the shop at all. No. I and Mr. McMullen then left the office and went down there.

Q. Did you observe anything there after you got down there with reference to the lights?

A. No, sir.

Q. Nothing at all? A. No lights.

Q. About how long did Laura Herrington stay in there before you saw Mr. Wooldridge again?

A. I think possibly three or four minutes.

Q. A short time?

A. Yes, sir, just time enough for me to leave Mr. Pratt's office, go down to Noble street, down to First, down to McPhee's corner, and I waited there possibly a minute, and then I came up and saw Mr. Rose.

Q. That is J. P. Rose? A. Yes, sir

Q. After you saw them, state what occurred.

A. I walked slowly up from McPhee's corner. The lights being out, I couldn't see whether there was anybody in front or not, in fact I didn't think there was anybody in front. I walked up slowly and got sight of Mr. Rose and Mr. [463] Wooldridge standing in front of the shop. Mr. McMullen was standing up near the corner with another man, and then Mr. McMullen came down, and Mr. Wooldridge, with Mr. Roseburg, that was the man, and we all went into the shop; and Mr. McMullen said to Mr. Roseburg "do you see this little girl here," and at that time there was a light on. I don't know who

(Testimony of Frank B. Hall.)

turned it on, but somebody turned the light on, and then he said, "Do you see this little girl here?" Roseburg said, "Yes." He said, "Do you know who she is?" and Mr. Roseburg said, "Yes." Then we started back to go up the street, and Mr. Miller met us and said, "Take them down to the office. Take Mr. Wooldridge down to the office," and he told me to go back and get Mr. Rose, which I did, and we went down to the office.

Q. Who all went to the office? A. All of us.

Q. Laura too? A. Yes.

Q. All right. What transpired in the office after you got there, if you know? Just state every word that transpired in the office when Rose and Wooldridge and Laura were there?

A. I was not in the private office at all. I don't know a thing that happened there, because I was busy with other work, which I started right in to do.

Q. I will ask you to state whether or not that same evening Mr. Rose was in the private office alone with Mr. Miller and Mr. Berg and Mr. McMullen and yourself and Mr. Wood. A. Yes.

Q. When was that with reference to this first time?

A. This was possibly twenty minutes to half an hour afterwards. [464]

Q. Did Mr. Rose make a statement there?

A. Yes, sir.

Q. Was it reduced to writing? A. It was, yes.

Q. Was signed? A. Yes.

Q. Was it sworn to? A. Yes.

Q. Before whom? A. Before me.

(Testimony of Frank B. Hall.)

Q. As a notary public? A. Yes, sir.

Q. I will show you a document, which is marked Plaintiff's Exhibit Number One, and ask you to state whether or not that is the document that you have reference to? (Hands document to witness.)

A. Yes, sir. This is the statement.

Q. Was that read over to Mr. Rose before he signed it? A. Yes, sir.

Q. Who read it to him? A. I did.

Q. Did you read everything that was in it to him?

A. Yes, sir.

Q. What did he say about it when you read it to him? A. He said that was right.

Q. Can you state to this jury whether or not Mr. Rose understood everything that was in that paper when he signed it?

Mr. MARQUAM.—I object. It is incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

The COURT.—In so far as it can be answered, it has been answered.

Mr. MARQUAM.—If there is any answer to it, we ask that it be stricken. [465]

The COURT.—“He said that was right” was the answer.

Mr. ROTH.—Q. How was the statement taken down? Just tell the jury how the statement was taken down.

A. Mr. Rose started to tell what had happened when Wooldridge came in, and as he talked Mr. Miller wrote what he said.

(Testimony of Frank B. Hall.)

Q. Yes?

A. And then Mr. Miller read it to him after he had gone a little ways and he would say "Wait a minute. Is that right," and he would read that; and so on until the thing was finished. Then Mr. Miller asked Mr. Rose if he cared to read it, if he would read it. Mr. Rose took the paper and said he hadn't his glasses with him and couldn't read it, so Mr. Rose asked me to read it to him, which I did.

Q. At this time where was Mr. Erwin, the United States Marshal?

A. He was on the trail—(interrupted).

(Defendant objects as irrelevant, incompetent and immaterial. Objection overruled and defendant excepts. Exception allowed.)

A. He was on the trail somewhere.

Q. How long had he been gone from the office?

A. Since in the fall.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. You say Mr. Erwin was on the trail at that time? A. I think he was. Yes, sir.

Q. How long have you been in the office and in his employ as deputy marshal, in the employ of the United States Government by his direction?

A. Since last July. [466]

Q. What had been your experience as a police officer or a deputy marshal, or a detective prior to that time?

(Testimony of Frank B. Hall.)

A. I am not a detective or a police officer. I am simply an office deputy marshal.

A. I just asked you what had been your previous experience along these lines, prior to the time you went into the office.

A. I have had no experience as a detective or a policeman.

Q. You don't claim to be a detective?

A. No, indeed.

Q. Or a police officer? A. No.

Q. You are an executive officer of the United States District Court?

A. In the marshal's office. Yes, sir.

Q. Well, although Mr. Erwin was on the trail coming in when all this happened, did you know his attitude and feeling against this defendant?

A. No, sir. I did not.

Q. You never heard anybody say anything about it? A. No, I didn't. No, sir.

Q. Did you ever know of Mr. Erwin and Mr. Miller going over to the members of the Alaska Railroad Commission or their employees and trying to get Mr. Wooldridge fired? A. No, sir.

Q. You never heard of that?

A. No, sir. I never did.

Q. Did you ever hear of some affidavit against Marshal Erwin upon which affidavit Mr. Wooldridge had placed his seal as a notary public like you did on this paper? [467]

(Plaintiff objects as not cross-examination. Ob-

(Testimony of Frank B. Hall.)

jection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—We wish to show—(interrupted).

Mr. ROTH.—We object to him making an offer of that kind.

Mr. MARQUAM.—I am not making an offer. The occasion of it, is asking Mr. Hall where Mr. Erwin was at that time on the trail—(interrupted).

The COURT.—If you desire to make an offer you can come to the desk with the Government's attorney.

Mr. MARQUAM.—If I can't make it that way I will have to withdraw it, but I except to the ruling of the Court.

The COURT.—The Court has not ruled.

Mr. MARQUAM.—The Court has indicated, whether it has directly ruled or not, that I can't ask that question.

The COURT.—No. You are away ahead of your story. You have presented what the Court believes to be an offer of proof, or an offer to prove, and the Court has asked you to come to the desk and make that offer in the usual way, and now you say you don't care to do that.

Mr. MARQUAM.—I take it that that is not the *usual* to make an offer of testimony. If the Court can see that it is for an impeachment purpose, I have a right to make that offer in the presence of the jury and not secretly.

The COURT.—The Court does not see that it is for that purpose, and the Court desires to have you

(Testimony of Frank B. Hall.)

come to the desk. If you desire to make that offer, as you did a few minutes ago.

Mr. MARQUAM.—Very well.

(Thereupon Mr. Marquam, Mr. Roth and the stenographer go to the desk of the Judge and there, not within hearing of the jury, Mr. Marquam makes the following offer.)

Mr. MARQUAM.—We expect to prove on the cross-examination of the [468] witness, F. B. Hall, now upon the stand under cross-examination, that he was cognizant and had knowledge for a long time past of the bitter feeling and hatred entertained by Mr. L. T. Erwin against the defendant Woolldridge; that this witness was in sympathy with the attitude of the said L. T. Erwin against the defendant; and the purpose for which this question is asked is to elicit upon cross-examination the bias and prejudice of this witness against the defendant.

The COURT.—The offer will be denied and an exception allowed.

(Said attorneys and stenographer returned to their seats and the trial is resumed in the hearing of the jury.)

Mr. MARQUAM.—Q. When were you first talked to, or did anybody talk to you, about going up the street here and hiding some place and watching what was going on? A. On February fifteenth.

Q. Had you any knowledge or information prior to that time of any trap being set or going to be set for this man Woolldridge?

A. No trap that I know of. No, sir.

(Testimony of Frank B. Hall.)

Q. You would not call it a trap. A. No, sir.

Q. Well, did you have any knowledge or information prior to that time that any scheme was to be laid by which he was to be involved in incriminating circumstances—if that suits you better as a description?

A. Well, I know that on February fifteenth I heard it talked in the office that Mr. Wooldridge was supposed to have made [469] a date, the evening following—or the evening previous, on the fourteenth, to meet—up at the Herrington residence, to meet Laura Herrington at that place.

Q. At what place? At the Herrington residence?

A. At the Herrington residence, yes.

Q. He had made an appointment to meet her at the Herrington residence? A. Yes.

Q. Who told you that?

A. I heard it talked about generally in the office among the boys. At that time I wasn't told anything more about that.

Q. That was on the fifteenth?

A. Yes. On the fifteenth.

Q. What time of day?

A. I think it was in the morning.

Q. That was the first you had heard of it?

A. Yes.

Q. That is the first you had been let into the understanding among the deputies as to what was going to happen? A. Yes.

Q. Were you up to Herrington's house the night before you went up to Rose's repair-shop?

(Testimony of Frank B. Hall.)

A. No, sir.

Q. You didn't get in on that?

A. I wasn't asked to go up there.

Q. What instructions did you have from anyone, Mr. Miller or anybody else, about what you were to do when you got up here around the corner of Second and Lacey Streets?

A. Mr. Miller told me to make arrangements in order to get some [470] place where we could hide ourselves and watch Rose's repair-shop, and see whether Mr. Wooldridge went in there, and whether Laura Herrington went in there, and there was some talk about getting Mr. Dodge's office or asking him if we could stay in there, but we didn't.

Q. Did you ask Mr. Dodge?

A. No. We didn't.

Q. Who did you ask?

A. We asked Mr. Pratt.

Q. Did you ask Judge Pratt? A. Yes.

Q. You did?

A. When I came up the stairs I asked Harry Pratt in the district attorney's office if we could use his office up there.

Q. Whose office?

A. Harry Pratt and Mr. Pratt's office. If we could use it, because we had reason to believe there was to be a crime committed, and we wanted to be in a position to stop it and prevent it from ever taking place again between these people, but I didn't tell Harry Pratt who it was, or anything about it, or what place we were going to watch.

(Testimony of Frank B. Hall.)

Q. Did you tell the old gentleman anything about it? A. Certainly.

Q. About what it was and who it was?

A. Oh, no. But I asked Harry Pratt if we could use the office and he said, "Yes, but you had better ask my father."

Q. Did you see him? A. Yes.

Q. Before you went up there? [471] A. Yes.

Q. Where?

A. Right in the district attorney's office. Harry came along and called him and he came in there and I explained the matter to him and he said, "Why, certainly. You evidently know what you are doing, and it is all right with me," and I said, "I have got the key from Harry," and he said, "That is all right."

Q. Judge Pratt said that? In the district attorney's office? A. Yes. He did, yes, sir, to me.

Q. Well, didn't he immediately after this thing had transpired come down to the marshal's office and jump on you roughshod for going into his office, and say to you in that connection that he thought it was—that you had gone pretty far, that he didn't maintain that office for a lot of "Peeping Toms" as he expressed it?

A. He said this—(interrupted).

Q. Didn't he say something about that?

A. Yes, he did about five days ago, but never previous to that time. Previous to this time he jumped on my back he came around to the office and tried to find out who it was.

(Testimony of Frank B. Hall.)

Q. Find out what?

A. Tried to find out what the trouble was about and who it was, and I wouldn't give him any information, and he laughed one day about the spectacle of Mr. Rose sitting on the grand jury—sitting on the steps, and he said, "I guess he is in trouble," and he laughed about it, and about five days later he got after me pretty hard. I didn't say anything to him. I simply let him go on and I told him, "You told us [472] we could go up there." "Yes," he said, "if it was to stop a burglary or something like that it would be all right, but not for this."

Q. Not for this kind of a layout? A. Yes.

Q. That is what he said?

A. Yes. And I told him I didn't care to discuss it any more; that the matter was dropped as far as I was concerned; that he had given his consent and I was sorry if I had bothered him and we wouldn't bother him any more. He said the matter wouldn't drop as far as he was concerned.

Q. He said if it had been a burglary or a murder, or something of that kind he would have been perfectly willing for you to use his office? A. Yes.

Q. But for this kind of stuff he didn't want it used for that?

A. He didn't want us to use it for that. I think he wanted to make sure that people wouldn't think that he had given me the key, I guess.

Q. Just tell this jury what Mr. Rose's condition was with regard to being calm, cool, collected, or nervous, excited and worried when he came down to the

(Testimony of Frank B. Hall.)

marshal's office and you talked with him down there.

A. Well, I don't think that he was what you might call very calm. He was slightly perturbed.

Q. Very red?

A. No. I think he was a little white.

Q. A little abnormally white was he?

A. I don't know him very well. He didn't act a great deal out of the ordinary. [473]

Q. What was your condition with regard to being calm, cool and collected.

A. That night you mean?

Q. Yes. No. I mean down here in the marshal's office, not when you were in Judge Pratt's office, peeking out. A. I was all right.

Q. Cool? A. I seemed to be. Yes.

Q. You were there when this statement was written? A. Yes, sir.

Q. How long did it take to prepare that statement?

A. I guess probably, maybe, fifteen or twenty or twenty-five minutes, something like that I don't know just how long.

Q. Fifteen, twenty or twenty-five minutes?

A. Yes, something like that.

Q. And everything that Mr. Rose said was taken down, was it? A. Yes, It was.

Q. Everything that he said? A. I think so, yes.

Q. Not just certain portions of it picked out and put down? A. No, sir.

Q. Was there anybody else at any time in there doing any talking except Mr. Rose? A. Mr. Miller.

(Testimony of Frank B. Hall.)

Q. That would be in the way of asking him questions, wouldn't it? A. Yes. And Mr. Berg.

Q. And whenever they would ask him a question, he would answer it? A. Yes, sir.

Q. And they were not interrupted in any way, nothing else [474] transpired or intervened so as to stop those proceedings? A. No, sir.

Q. They kept on from the time they started until they finished, and in that fifteen, twenty or twenty-five minutes of this conversation they got these two pages? A. Yes.

Q. And everything that occurred or was said was written down there.

A. I think the substance of what he said, and it was read over to him carefully.

Q. Now, you then read it? A. Yes, I read it.

Q. Have you ever read it since?

A. Not until it was just handed to me just now.

Q. Did you just now read it? A. Yes, sir.

Q. Tell this jury what is in this paper.

(Plaintiff objects as irrelevant, incompetent and immaterial and not cross-examination. Objection sustained. Defendant asks and is given an exception.)

Q. Can you tell this jury what is in this paper right now?

(Plaintiff objects on all the grounds last stated. Objection sustained and defendant excepts.)

Q. Tell this jury what Mr. Rose said at that particular time.

(Plaintiff objects as irrelevant, incompetent and

(Testimony of Frank B. Hall.)

immaterial, because the paper here is the best evidence of what Mr. Rose stated at that time.)

Mr. MARQUAM.—We submit it is not the best evidence.

The COURT.—Do I understand you to ask the question for the purpose of testing the witness' credibility?

Mr. MARQUAM.—I am asking the question not for the purpose of testing his credibility, but to test his recollection. It [475] would go to his credibility, of course, but now I am cross-examining him on the direct testimony.

A. You want me to tell you the substance of what Mr. Rose said?

Q. No. I don't want the substance, but the language he used.

The COURT.—Q. Can you give the exact language Mr. Rose used in the office that evening?

A. Not all of it.

Mr. MARQUAM.—Q. Can you give any of it?

A. No, sir. I don't think I could. Not positively, no. I can tell you about what he said.

Q. All right. Now just go ahead and tell exactly what he said as near as you can.

A. I can tell you about what he said.

Q. All right. Let's have it.

A. I am not saying this is exactly the words he used.

Q. No.

A. He said that Mr. Wooldridge came into his place about ten or twelve minutes to eight, or some-

(Testimony of Frank B. Hall.)

thing like that, and Mr. Wooldridge said, "You have too much light on here," and he turned out the light. And then Mr. Wooldridge went back into the back room and lay down on the bed. And then Mr. Rose said that Wooldridge said that he was going to get a piece from Laura or words to that effect.

Q. You would surely remember the words right at that point. Use the words he used.

A. "Going to get a piece from Laura"; "or used words to lead me to believe he wanted to have sexual intercourse with her." [476]

Q. All right. Go ahead.

A. And Mr. Rose said, "I wouldn't do that if I were you. I would wait until the grand jury is over, because if you don't they might suspect something and they would take the girl up into Roth's office, and they will turn her over to the assistants and then they will take her down into the grand jury-room, and they will sweat her until she tells the truth, tells it all."

Q. Go ahead.

A. That is all I can recollect just right now.

Q. Think a while. I want it all.

A. I don't recall it right at this minute.

Q. That is all you remember?

A. All at this time.

Q. After awhile you can remember more?

A. Yes. I might.

Q. If you saw this paper here you could remember some more? A. Yes. I might.

Q. If you talked with Roth you might remember

(Testimony of Frank B. Hall.)

some more of it couldn't you?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained.)

Q. That is all you can remember now, but if you were given a few minutes, two or three minutes, you think you could remember some more?

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained. Defendant excepts and exception allowed.)

Q. You are quite clear that Erwin was on the trail when all this came off? A. Yes, I think he was.

[477]

Q. How long after you saw Laura Herrington go into this store was it that you and Mr. McMullen left the office of Mr. Pratt?

A. Oh, possibly a minute or two minutes after that.

Q. Where did she come from?

A. She came down Second Street and turned the corner of the bath-house and went down Lacey Street.

Q. How did you know it was her?

A. Because I recognized her.

Q. Weren't you expecting her? A. Yes.

Q. *Would have* recognized her had you not been expecting her— A. I think I would.

Q. —that far off at night?

A. Yes, there is a light there.

Q. Where? A. On the corner.

Q. On the corner? On the bath-house corner?

A. On the bath-house corner, I think. I know it was light on the corner.

(Testimony of Frank B. Hall.)

Q. Which corner did she turn around?

A. The bath-house corner.

Q. And the light is on that corner?

A. I think it was. Anyway it was light enough.

It was light.

Q. How was she dressed?

A. She had a dress on, and a coat.

Q. Under the coat you could see it? A. No.

Q. You presumed it was under the coat?

A. Yes, sir. [478]

Q. What kind of a coat did she have on?

A. I don't know.

Q. Could you recognize it, I mean in the light?

A. No.

Q. Do you know what kind of a hat she had on?

A. I didn't notice that.

Q. How did you recognize her? A. By her size.

Q. A cute little figure? A. Yes.

Q. Did you see her face?

A. No, I don't think I did.

Q. But you knew it was her? A. Yes.

Q. And would have known it was her if she had been going the other way? A. Yes.

Q. Or no matter where else she had been? Or on what other occasion, you could recognize it was her?

A. Yes, I—(interrupted).

Q. Did Wooldridge tell you she was coming up there? A. No, sir.

Q. Didn't he tell you that she was coming from the home of George Herrington and going in there at eight o'clock?

(Testimony of Frank B. Hall.)

A. I knew she was going in there at eight o'clock, but I didn't know where she was going from.

Q. Did you see anybody else pass there about that time? A. Yes.

Q. Who? [479] A. Some woman.

Q. Who was the woman? A. I don't know.

Q. You could see her? A. Yes.

Q. What did she look like? Who was she?

A. I don't know.

Q. Was she an elderly woman, or a young woman?

A. I don't know.

Q. Could see her? A. Yes.

Q. You could see her just as plain as you could Laura Herrington?

A. Yes. But I didn't know this woman.

Q. You were not interested in that lady or this woman? A. No.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

Testimony of W. G. Cassels, for Plaintiff.

W. G. CASSELS, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. ROTH.)

Q. What is your name? A. W. G. Cassels.

Q. What is your profession? A. Physician.

Q. Are you acquainted with Laura Herrington?

[480] A. I know who she is. Yes.

Q. Did you make an examination of Laura Herrington, recently? A. Yes, yesterday.

(Testimony of W. G. Cassels.)

Q. Did you make such an examination as you could tell whether or not her hymen had been ruptured?

A. There is no hymen there at the present time.

Q. You made an examination of her?

A. Yes, I did.

Q. What did you find with reference to the question of whether or not—just state what the result of your examination was, Dr. Cassels.

A. There is an absence of a hymen at the present time.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. I don't suppose it is possible for you to tell when that hymen was ruptured?

A. I wouldn't attempt it.

Q. Within certain limits—within what limit could you say of time that could have occurred? How recently or how anciently?

A. There are no marks of violence there, so it must have been that whatever injury was there has gotten perfectly well.

Q. The hymen could have been lacerated and ruptured three or four months ago? A. Possibly.

Q. And would bear the same appearance that it does now? A. Three or four months ago, yes.

Q. Would it take that long, do you think, Doctor, to have the [481] healing process go on so as to have the appearance that it has to-day?

A. That would depend on the violence used. It

(Testimony of W. G. Cassels.)

would be difficult to answer that absolutely.

Q. But you would say that it would be safe to say that it might have happened three or four months ago and still be in the condition it is now?

A. Yes, sir. If there had not been any great amount of injury, in three or four months the condition could be as it is to-day.

Q. Or it might have occurred a longer period than that? A. Yes.

Q. State to this jury, Doctor, what the condition was with regard to the sexual organs of this girl and the absence of a hymen, as compared with a woman known to have had continual sexual intercourse, frequent sexual intercourse?

A. Well, I can tell the jury that I didn't make an examination of the vagina,—that was not the object—to show that. The frequency of sexual intercourse is possibly more shown in the vaginal wall than it is in the external portion after the rupture of the hymen.

Q. Wouldn't this be true, Doctor, that a complete rupture of the hymen and the destruction of the hymen, as I understand you to say existed in this case, wouldn't be due necessarily or likely, to one act of sexual intercourse?

A. Yes. It could be due to one act of sexual intercourse.

Q. It could be, but that wouldn't be the probable result? A. Yes. It would be the probable result.

Q. And have it as badly destroyed as this was?
[482]

(Testimony of W. G. Cassels.)

A. As soon as it is destroyed that is the end of the hymen.

Q. It is true, is it not, that there can be cases of sexual intercourse without the destruction of the hymen? A. In certain forms of hymen, yes.

Q. You haven't any idea, of course, from the condition you found there, what form of hymen this was? A. No.

Q. And you couldn't tell whether it would have been possible for this girl to have sexual intercourse before her hymen was ruptured.

A. I couldn't say. I think it very unlikely in a small orifice like hers to have had any hymen without having it ruptured by sexual intercourse.

Q. Could you tell with any degree of certainty from the standpoint of a medical man, by an examination, a thorough examination of this girl whether she had been in the habit of having sexual intercourse with males?

(Plaintiff objects as not cross-examination. Objection sustained. Defendant excepts. Exception allowed.)

Q. I will ask you if you will make a further examination of this girl for the purpose of testifying before this jury, as an expert upon that main question, whether or not in your opinion as a physician she is a girl who has had sexual intercourse frequently with males.

(Plaintiff objects as irrelevant, incompetent and immaterial, and that it is not proper cross-examination.)

(Testimony of W. G. Cassels.)

The COURT.—The only proposition is this: If you are simply making this as a request for the doctor to make him your witness, you shouldn't make it here in the presence of the jury, and *and* the question as put by you should be stricken. If you want [483] to make such requests, you should make them outside and not in the presence of the jury.

Mr. MARQUAM.—We take this view. I would like to be heard on this.

The COURT.—As to whether or not this witness should answer the question you have now put to him?

Mr. MARQUAM.—Principally upon the admission of the question immediately before that.

The COURT.—That has been ruled upon.

Mr. MARQUAM.—Would the Court consider reversing his ruling upon that?

The COURT.—No.

Mr. MARQUAM.—And give me an opportunity to be heard.

The COURT.—No, I don't care to hear you.

Mr. MARQUAM.—We except. That is all.

The COURT.—You already have an exception to the ruling. I am only going to allow one exception to each ruling. I think that is sufficient.

(Trial continued until February 11, 1916, at 10 o'clock A. M., and the jury, after being admonished as usual by the Court, withdraw in charge of the bailiffs. [484])

March 11, 1916, 2 o'clock P. M., defendant and his attorneys and the District Attorney and the jury are

(Testimony of W. G. Cassels.)

present in court and trial resumed.

Mr. ROTH.—There are one or two small matters I overlooked when Mrs. Herrington was on the stand and I now ask permission of the Court to recall Mrs. Herrington for the purpose of asking these formal questions.

The COURT.—Permission will be granted you.

Testimony of Mrs. Exena Herrington, for Plaintiff.

Mrs. EXENA HERRINGTON, a witness for plaintiff heretofore sworn, testified as follows, to wit:

Direct Examination.

(Mr ROTH.)

Q. Mrs. Herrington, was Laura ever married?

A. Ever married?

Q. Yes. Did she ever marry anybody?

A. No.

Q. She is not the wife of Mr. Wooldridge?

A. No.

Q. Mrs. Herrington, when you were up at Morency's the time that Mr. Dodge talked to you, what did Mr. Dodge tell you when he came to you to talk to you? A. Well, he asked me questions.

Q. What did he say first?

A. He said that Mr. Wooldridge brought the potatoes.

Q. Never mind now. Not about that.

A. That is what he said first.

Q. Did he say anything about the Court?

A. Oh, he said he was sent by the Court.

Q. Sent by the Court? A. Yes. [485]

(Testimony of Mrs. Exena Herrington.)

Q. Mr. Dodge told you that? A. Yes.

Q. Now, I want to ask you another thing; where is this cache where he gave you this dollar and this bottle of whiskey; is it in the front of the house or the back part of the house, or where is it?

A. In the cache.

Q. Where is the cache.

A. Cache, in the back part.

Q. In the back part of the house? A. Yes.

Mr. ROTH.—You may cross-examine.

Cross-examination.

(By Mr. MARQUAM.)

Q. What did you say that Mr. Dodge told you, Mrs. Herrington, when he first came there?

A. He said he was sent by the Court.

Q. That is that he, that Mr. Dodge was sent by the Court? A. Yes.

Q. Are those just the words he used?

A. Yes. He said they ask me questions.

Q. And that he was sent by the Court? A. Yes.

Q. You are sure of that? A. Yes, I am sure.

Q. Didn't Mr. Dodge tell you at that time that he was representing Mr. Wooldridge? A. Yes.

Q. That is, that he was his lawyer and that he wanted to talk [486] with you and find out what the facts were in the case from you. Didn't he tell you that, or words to that effect? A. Yes.

Q. He told you that he was Mr. Wooldridge's lawyer? A. Yes, sir.

Q. Or representing him, did he? A. Yes.

Q. When was it that he told you that the Court

(Testimony of Mrs. Exena Herrington.)

sent him, then, if he was Mr. Wooldridge's lawyer?
Did he say that at the same time?

A. Yes. He told me that he was going to help him
•out.

Q. Going to have Mr. Wooldridge out?

A. Help him out.

Q. He was going to have Mr. Wooldridge help him,
or he was going to help Mr. Wooldridge?

A. He was going to help Mr. Wooldridge. That
is the way I understood.

Q. As his lawyer, you mean? A. Yes.

Q. How did he come to say, or when did he say,
that the Court had sent him?

A. I can't understand that.

Q. You mean you can't understand my question?

A. No, sir.

Q. I want to know if it was before he told you that
he was Mr. Wooldridge's lawyer or after he told you
that he was Mr. Wooldridge's lawyer that he said
to you the Court sent him.

A. Well, first he said that he was Mr. Wooldridge's
lawyer and if I ain't mistaken, then he said that he
is sent by the [487] Court.

Q. You say "if you are not mistaken"?

A. If I ain't mistaken he said the first that he was
Mr. Wooldridge's lawyer.

Q. He said that first? A. Yes.

Q. What did you understand by what you think
that he said; did you understand that the Judge of
this court had sent him up there to talk to you?

A. No, I don't think that at all.

(Testimony of Mrs. Exena Herrington.)

Q. What did you think from what you were told, Mrs. Herrington?

A. Well, I don't understand these things, you know.

Q. We are trying to find out just exactly what he said there. Explain it as best you can, Mrs. Herrington. What did you think, what impression—well impression she wouldn't understand—what did you think when Mr. Dodge told you that the Court had sent him there?

A. Well, I think—when he told me that, I think that the Court sent him.

Q. What do you mean by the Court?

A. I don't know what that means, "by the Court." I can't understand.

Q. You don't know what that means? You don't know what the word "Court" means? A. No.

Q. You didn't think from what he said to you that the Judge here had sent Mr. Dodge? A. No.

Q. You didn't think so? [488] A. No, not at all.

Q. Did you have any idea? What did you think?

A. No, I didn't have an idea at all.

Q. How do you remember, then, that he said that the Court sent him if you don't know what it was? How do you remember that "Court"?

A. Well, I remember what he told me. That is all I can tell.

Q. You remember the word "Court," do you?

A. He said the Court was sending him here. That is all I remember.

Q. That the Court sent him here? A. Yes.

(Testimony of Mrs. Exena Herrington.)

Q. And you didn't know, and don't know now, what the word "Court" means? A. No.

Q. Well, he told you that, told you that he was Wooldridge's lawyer; then he told you that he wanted to find out—wanted to talk with you and find out just what the facts in the case were, or what had happened? A. Yes.

Q. And he wanted you to tell him, if you would, everything that you knew about this Wooldridge matter, didn't he?

A. Yes. But I told him I didn't know anything only what Laura told me. That is all.

Q. You didn't know anything only what Laura told you? A. Yes, that is what I told him.

Q. Who did you first tell or talk to when you told that Mr. Dodge had said that the Court sent him? Who did you tell that to first?

A. I think I told him (indicating Mr. Roth). |[489]

Q. Mr. Roth? A. Yes.

Q. When? A. When I came up here.

Q. To-day? A. No.

Q. The first time?

A. The second time I think I came.

Q. Did you tell Mr. Roth at that time just in the words that you told on the stand, that Mr. Dodge said that the Court had sent him? A. Yes.

Q. You told him that the first time you talked to him? A. Yes.

Q. Did he explain to you what the word "Court" meant?

(Testimony of Mrs. Exena Herrington.)

(Mr. Roth objects as not cross-examination. Objection overruled.)

A. No.

Q. Did Mr. Roth at that time ask you if you knew what the word "Court" meant?

A. No, I don't think so.

Q. And you didn't ask him? A. No.

Q. And he didn't explain it?

A. No, I didn't ask him.

Q. Might this be the remark that you heard Mr. Dodge make: That Mr. Wooldridge's case was coming up in court, or something of that kind?

A. No, I don't think I did.

Q. You are sure that he told you that the Court had sent him?

A. Yes, I am certain that he told me that the Court sent him.

Mr. MARQUAM.—All right. That is all. [490]

Mr. ROTH.—That is all. The Government rests.

Mr. MARQUAM.—We desire to present some motions.

The COURT.—Very well, the jury may retire.

(The jury, *after admonished* by the Court as usual, withdraw from the courtroom in charge of the bailiffs.)

Mr. MARQUAM.—The defendant moves the Court to instruct the jury to return a verdict of not guilty upon the second count in the indictment herein, for the reason, first, that the allegations contained in the said second count of the indictment are not sufficient to constitute a crime; second, for the

(Testimony of Mrs. Exena Herrington.)

reason that there is not sufficient evidence produced upon the part of the prosecution to sustain the allegations of said second count, if the same do constitute a crime; third, for the reason that the evidence adduced upon the part of the prosecution is insufficient to warrant the jury in returning a verdict of guilty thereon, in that all the evidence adduced upon the part of the prosecution tends to prove, if it proves anything, some acts of preparation, no proof of an attempt of the commission of the crime or rape has been established by the evidence; that if this jury returned a verdict of guilty upon the second count in said indictment, the Court, under the law and under the evidence, would be required to set the same aside. (Argument.)

Is the Court going to rule on this motion before the jury comes in?

The COURT.—I intend to rule upon the motion after the jury comes in. [491]

Mr. MARQUAM.—(After the argument and after remarks by the Court.)—I am going to assume that the motion will be overruled. The defendant desires to request at this time that the prosecution elects as between the first and second count upon which count they rely for a conviction in this case. The record can show that this motion is made and presented without argument.

(After some discussion the jury are returned into Court and being called answered to their names.)

The COURT.—The record may show that the first motion interposed by the defendant is denied and an

(Testimony of Axel Running.)

exception allowed, and that the second motion is also denied and an exception allowed.

Testimony of Axel Running, for Defendant.

AXEL RUNNING, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Your name is Axel Running? A. Yes, sir.

Q. Where do you reside?

A. I live on Fourth Avenue, between Cushman and Lacey.

Q. You have resided here for a number of years, have you not? A. Yes, sir; eight years.

Q. Are you acquainted with the girl by the name of Catherine Herrington? A. Yes, sir.

Q. Did she ever work for you? A. Yes, sir.
[492]

Q. When?

A. She came to work for me about the seventh or eighth of February, 1915.

Q. How do you fix that date?

A. Well, my wife went to the hospital, I believe on the 28th of January, and she came home on the fifth of February, and she went to work a few days after that, the second or third day after that.

Q. Is that the only time she ever worked for you?

A. Yes, that is the only time.

Q. And how long did she work?

A. Something around three weeks.

Q. Something around three weeks, commencing on the fifth day of February?

(Testimony of Axel Running.)

A. Two or three days after that. My wife came home and it was two or three days before I got her.

Q. That is Catherine Herrington, the daughter or step-daughter of George Herrington. I believe she is a sister of Laura Herrington.

A. Well, I have heard so. I am not sure of that.

Q. Have you had occasion since being first spoken to about this to refresh your memory from any data, so that you are accurate about the date?

A. Yes, I looked it up and I found the bill from the St. Joseph's Hospital.

Q. That is the one you turned over to me?

A. Yes.

Mr. MARQUAM.—That is all.

Mr. ROTH.—No questions. [493]

Testimony of J. H. Miller, for Defendant.

J. H. MILLER, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Miller, I want to ask you if any further attempts or preparation were made with regard to finding out what was going on in Rose's repair-shop after the occasion that you testified to the other day? That will be on the fifteenth, will it not?

A. Nothing further that I know of, Mr. Marquam.

Q. Was there any attempt made or efforts made on the succeeding evening, or any evening after that, to station deputies in this hall where they had previously been stationed, for the purpose of overhear-

(Testimony of J. H. Miller.)

ing any conversation that might possibly occur in there? A. No, sir.

Q. At no time subsequent to that?

A. Not at my direction or of my knowledge.

Q. You have no knowledge of it?

A. And I believe there was not by any of the other boys. I don't think it would have been done without my knowledge or consent.

Mr. MARQUAM.—At this time, while Mr. Miller is on the stand, I wish to make a statement with regard to a question I asked Mr. Miller the other day. I laid the foundation for impeachment upon the question of his having tried to influence, and successfully influencing Mrs. Kettleson, who runs the Little Grill, and I want to *the* say to the Court and in the presence of the jury that our information upon that subject was incorrect; that I understand the fact to [494] be that Mr. Wooldridge's daughter was not employed there at all, and I take this opportunity, and I am very glad of the opportunity to say that we were mistaken about it.

The COURT.—Very well. Any further examination?

Mr. MARQUAM.—Not with this witness.

Mr. ROTH.—No cross-examination.

Testimony of B. A. Dodge, for Defendant.

B. A. DODGE, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Dodge, you are one of the attorneys for the

(Testimony of B. A. Dodge.)

defendant in this case? A. Yes, sir.

Q. And you were acting as such attorney since about what time, Mr. Dodge?

A. I think since Saturday following the time of the arrest of Mr. Wooldridge.

Q. I will ask you if, acting as such attorney, you have ever sought and had a conversation relative to the facts in this case with Mrs. Herrington?

A. I have.

Q. Where did that occur and when?

A. It occurred on the twenty-first day of February, I think. I made arrangements for the meeting through Mr. Morency, to take place at his house in the evening. Mr. Morency is a brother-in-law of Mrs. Herrington. His wife and Herrington's [495] wife are sisters. I knew Morency and I thought I could make an arrangement of that kind. I did so.

Q. I will ask you if at that time you—let me ask you this. I withdraw that. Did you at that time state to Mrs. Herrington that you wanted to find out what the facts in the case were, as far as she knew them, as far as Wooldridge was connected with this matter, and as far as his having been at her house?

(Plaintiff objects that the proper foundation has not been laid for the introduction of the testimony, in that the parties present were not stated; that this question is incompetent, anyway, because it is not an impeaching question, and for that purpose it is hearsay. After argument, at request of counsel the reporter reads from the testimony given by Mrs. Xena

(Testimony of B. A. Dodge.)

Herrington as follows:

“Do you know Mr. Dodge. Know who he is?

A. I seen him once.

Q. Where? A. Up to Morency’s.

Q. He was there talking with you? A. Yes.

Q. Didn’t he ask you what had occurred there at the time that Wooldridge came there. He was talking to you about that, was he not?

A. Well, he asked me a few questions there.

Q. Yes? He asked you, did he not, if Wooldridge had given you any money, or a dollar, did he not?

A. I don’t remember if I did answer that or not.

Q. That is what you were there with him for; at least, that is what he was there for, to talk with you and find out what you knew about this case, isn’t that true? Mrs. Herrington, isn’t that true? [496]

A. I don’t know.

Q. Well, anyway, he was talking to you.

A. Yes, I was talking to him.

Q. And talking about this case? A. Yes.

Q. And did you not at that time tell Mr. Dodge that you asked Mr. Wooldridge to loan you a dollar, or to give you a dollar?

A. I didn’t ask him for a dollar.

Q. The question is, did you not tell Mr. Dodge at that time when he was finding out what you knew about this case that ‘I asked Mr. Wooldridge to let me have a dollar,’ or ‘to loan me a dollar’? A. No.

Q. Isn’t that what you told Mr. Dodge?

A. No, I didn’t.

Q. You deny that? A. No, I didn’t ask him.

(Testimony of B. A. Dodge.)

Q. Then you deny it. Well, had there been anything said between you and Laura or Mr. Wooldridge about any money, before he gave you this dollar?

A. No. I never know nothing about the dollar, then he give it to me to give to Laura. That is all I know.

Q. Without saying anything; just came and handed you a dollar? A. Yes. He said—

Q. What did he say?

A. He said, 'You give that to Laura.' "

(The matter is argued by counsel and Mr. Marquam states that in order to get the records straight he will ask another question.)

Q. I will ask you this question, Mr. Dodge, whether or not upon the occasion of your being at Mrs. Herrington's house (evidently means "Mrs. Morency's house") at the time fixed [497] in your answer to my interrogatory, you and she being present, she did not tell you at that time and place that she had asked or begged a dollar from Mr. Wooldridge when he was up there at her house on the morning of the fourteenth of February, 1916?

(Plaintiff objects for the reason that proper foundation has not been laid for the introduction of the testimony, in that, it does not appear what parties were present. Objection sustained. Defendant excepts. Exception allowed.)

Mr. MARQUAM.—That is all.

Mr. ROTH.—No questions.

Testimony of Ed Hall, for Defendant.

ED HALL, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Hall, you are occupied as night watchman, are you not, around the town of Fairbanks?

A. Yes, sir, for some of the merchants, I am.

Q. And you are occupied in that capacity, and have been all winter, have you not?

A. All winter? Yes, sir.

Q. During the month of February? A. Yes.

Q. During the fifteenth and sixteenth of February? A. Yes.

Q. And the fourteenth?

A. Every night. [498]

Q. You have a certain route which you follow?

A. Yes. Different rounds.

Q. Just tell us what that route is.

A. Well, the fore part of the night, I go down here by Sargent and Pinska's warehouse, down to Golden's store, then I go up Front Street at times, up to Noble. That is the street where Moody's shop is on.

Q. Go up Front Street?

A. Yes. Sometimes I go up Front Street that way and at other times I go up probably Second and I sometimes go up Third, and then come around by those warehouses—Barney Simon's.

Q. Do you stop on your way up Front Street before you get up to Moody's?

(Testimony of Ed Hall.)

A. I stop at the Fairbanks corner and put in a fire.

Q. Where else do you stop on Front Street. Anywhere along that block?

A. Yes. I sometimes step into a saloon.

Q. No work to do? A. No.

Q. Do you go up to Smith's gun store?

A. Yes. I step over there to Smith's gun-store and try the door, and Vachon's.

Q. As part of your work?

A. Yes, sir. And Vachon's store there.

Q. Then when you go up Front Street, how far do you go, up to Noble?

A. Up to Noble. That is where I turn and go down then by the warehouses, the warehouses of Barney Simon. [499]

Q. Down toward the river?

A. No. I mean up the other way.

Q. You mean up?

A. That is from Front Street, yes.

Q. Then how do you come down town?

A. Sometimes I come down Third, other times Second.

Q. Do you ever come down First?

A. I seldom go down Front Street the same way again. I might sometimes, but very seldom.

Q. Then you go on down town?

A. Then I have to take in Lavery's warehouse on Fifth and Gordon's store, that is in the morning I build a fire there, but I go up and try the doors in the evening.

(Testimony of Ed Hall.)

Q. You say at different times—(interrupted).

A. Then on Second Street I have the Fair there that I go in. I have a key to that place; and the back of those buildings those stores, such as Barney Simon's store and other places, I go and look around there in case of fire. They pay me for looking after it, and I don't have any key to those places, you understand.

Q. What time do you go to work?

A. I go to work at seven o'clock.

Q. In the evening? A. Yes.

Q. When do you go off?

A. Seven o'clock in the morning. I hardly ever get off at seven, pretty near eight o'clock.

Q. How many times do you make your rounds?

A. I make my rounds, probably,—sometimes it will be every [500] two hours. It use to be every hour but I couldn't make it this winter that way; every two hours or two hours and a half. But I didn't go clear up to Noble Street that often.

Q. Do you go up there on the first trip?

A. I generally go up there along about nine or ten o'clock in the evening, and take a look at the door; then sometimes I go up there in the morning, but not every morning.

Q. Do you go to your house during the night?

A. I have been down to my own house a couple times after different stuff.

Q. A couple times every night?

A. No. A couple of different times, on certain nights, that is maybe one or two nights, but not more

(Testimony of Ed Hall.)

than two or three different times.

Q. You don't have any particular way of going from place to place on your rounds?

A. No. I have no particular way.

Q. Sometimes you go one way, and sometimes another? A. Yes.

Q. When you are up at the upper end of town, coming down Front Street, do you ever go up Lacey Street? A. How is that?

Q. After you get up around Moody's and Smith's and there— A. Yes.

Q. How often have you come from Front Street up to Second Street on Lacey Street.

A. Oh, I have come up that way quite a good many times. I couldn't tell about how many times. [501]

Q. Quite a good many times?

A. At different times.

Q. Quite a good many times throughout the winter? A. Throughout the winter, yes.

Q. Frequently?

A. No. I wouldn't say frequently, for I generally, lots of times, I come around the other way, but I go that way probably as often as I went up Second or Third Street.

Q. And in doing so, you passed by Rose's bicycle-shop.

A. Let's see that is on Lacey. Well, I don't pass that place as a rule, maybe once or twice a—(interrupted).

Q. I thought you went up Lacey Street to Second quite often.

(Testimony of Ed Hall.)

A. I got the streets mixed. I mean Noble Street, the street that the warehouse is on.

Q. You know where Lacey Street is?

A. That is Bill McPhee's corner?

Q. That is the street I asked you about.

A. Well, I misunderstood the street.

Q. You don't go there very often?

A. I don't go there very often.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

(The Court continues the trial until eight o'clock P. M. to-day, and the jury withdraw in charge of the bailiffs after being admonished as usual by the Court; and at eight o'clock P. M. the defendant and his attorneys and the district attorney and the jury being present, the trial is resumed.) [502]

Testimony of George Berg, for Defendant.

GEORGE BERG, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Berg, did you at any time in connection with your investigation of this case go to Mrs. Herrington's and make inquiry for a certain whiskey bottle that she had? A. Yes, sir.

Q. That she said that Wooldridge had given *here*.

A. Yes, sir.

Q. Have you that bottle? A. Yes.

Q. Where is it? A. It is down in the vault.

Q. I wish you would produce it.

(Testimony of Ed Hall.)

(Witness withdraws from courtroom, and returns with a flask which he delivers to Mr. Marquam.)

Q. Is this the bottle that Mrs. Herrington told you that Wooldridge gave her? A. Yes, sir.

Mr. MARQUAM.—We offer this in evidence.

Mr. ROTH.—No objection.

(Bottle admitted in evidence and marked Defendant's Exhibit "A.")

Mr. MARQUAM.—Q. In your investigation further in regard to this matter did you get any more than one bottle from Mrs. Herrington?

A. No, sir.

Q. In trying to trace this matter up and connect it, did you take this bottle and exhibit it to the bartender in the Washington Saloon? [503]

(Plaintiff objects as irrelevant, incompetent and hearsay. Objection overruled.)

A. Yes, sir.

Q. Did he identify it as the bottle that was purchased by Mr. Rose?

A. He did not. He didn't identify it at all. He said they had such bottles or that size.

Q. Did you subsequently take another bottle to Mr. Kennedy of the Washington Saloon and ask him if the other bottle was the one that he sold Mr. Rose?

A. No, sir.

Q. Never any more than once?

A. I was in there several times.

Q. With regard to the identification of a bottle?

A. That is all. Just the once.

Q. How many bottles all together did you take into

(Testimony of Ed Hall.)

Mr. Kennedy for the purpose of identification?

A. That bottle (indicating) is all.

Q. What? A. Just that one.

Q. Just this one? A. Yes.

Q. You are sure about that, Mr. Berg?

A. Yes, sir.

Q. Isn't it true that you, after Mr. Kennedy failed to identify this bottle as the bottle sold to Mr. Rose that you brought a different and another kind of a bottle there and asked him if that was the bottle that he sold to Mr. Rose?

A. No, sir. I didn't ask Mr. Kennedy to identify that bottle. I went there to see if they had such bottles. [504]

Q. Did you ask him if that was *they* bottle, the kind of a bottle he sold to Mr. Rose?

A. No, sir. I asked him if they had such empty bottles of that size, a two-ounce bottle, and he showed me three different size bottles, three different shapes that he had.

Q. You didn't ask him, you say, if that was the bottle that he sold to Mr. Rose?

A. I don't think so.

Q. If that is your positive testimony, that is all I want.

A. I didn't ask him if that was the bottle he sold to Mr. Rose.

Mr. MARQUAM.—All right. That is all.

Mr. ROTH.—No cross-examination.

**Testimony of Mrs. Exena Herrington, for
Defendant.**

Mrs. EXENA HERRINGTON, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mrs. Herrington, I wish you would describe to the jury the bottle that you say Mr. Wooldridge gave you that had whiskey in it.

(Plaintiff objects on the grounds that the same question was answered by the witness on cross-examination. Objection overruled.)

Q. Just describe so the jury will understand, that bottle that you got from Wooldridge.

A. I can't understand.

Q. (By the COURT.) Can you tell what kind of a bottle it was that you claim you got from Mr. Wooldridge?

A. I said it must have been a pint. One of them flask bottles, [505] about that long and that wide (indicating), white.

Q. A pint bottle?

A. A pint. That big bottle is a pint. I don't know what you call a pint.

Q. Did you testify on the stand the other day on cross-examination—she may not understand that—when you were here the other day, didn't you say it was a half-pint bottle?

(Plaintiff objects on the ground that that was not

(Testimony of Mrs. Exena Herrington.)

her testimony ; that she said it was a pint bottle. Objection overruled.)

Q. Didn't you say the other day that it was a half-pint bottle? A. No. I said it was a pint.

Q. You said it was a pint bottle? A. Yes.

Q. Would you know that bottle again if you saw it? A. Yes.

Q. Is that the bottle (indicating).

Mr. ROTH.—We object to the question on the grounds that that is not the full exhibit.

The COURT.—Objection sustained.

WITNESS.—Yes, that is the one.

Mr. MARQUAM.—I don't want any Indian calico on that bottle.

The COURT.—You offered it in evidence, and it is your exhibit.

Mr. MARQUAM.—I am asking if this is the bottle.

The COURT.—If you desire to exhibit the bottle to the witness on the stand, exhibit it as it was introduced in evidence by you.

Mr. MARQUAM.—No. I have a right to exhibit it to her without it being designated by any other thing.

Mr. ROTH.—We object.

The COURT.—Objection sustained. Exception allowed. [506]

Mr. MARQUAM.—Does the Court say that I can't exhibit this bottle without that piece of calico?

The COURT.—Certainly not. That is a part of the exhibit.

(Testimony of Mrs. Exena Herrington.)

Mr. MARQUAM.—I don't think it is fair with this piece of Indian calico on there by which she can identify it as that bottle.

Q. Is that the bottle? A. Yes.

Q. How do you know it is? How do you recognize it? A. By that stuff.

Q. That is the only way you recognize it?

A. Yes.

Q. Did you put that there?

A. The marshal put it on there.

Q. If that calico wasn't on there you couldn't tell whether that was the bottle or not.

A. I can't. No.

Q. That the same size bottle?

A. Yes. The same size.

Q. That Wooldridge gave you? A. Yes.

Mr. MARQUAM.—Very well (returns exhibit "A" then to the clerk).

Q. When did you give that to the marshal?

A. I can't remember when I did.

Q. Give us your best judgment. When do you think you gave it to him? A. It must be a week.

Q. How many days after the fourteenth?

A. The fourteenth, I can't understand that.

Q. You testified that you got this bottle from Wooldridge about [507] a half hour after ten o'clock on the fourteenth of February, that is, half an hour after ten o'clock in the morning.

Mr. ROTH.—Now—(interrupted).

Mr. MARQUAM.—Q. How long after that did you give this bottle to the marshal?

(Testimony of Mrs. Exena Herrington.)

Mr. ROTH.—She didn't testify that she got it a half hour after ten o'clock on the fourteenth.

Mr. MARQUAM.—I am trying now to fix definitely, as near as I can, when she turned it over to the marshal.

The COURT.—Very well.

Mr. MARQUAM.—Q. When did you give this bottle to the marshal?

The COURT.—Do you remember when you gave this bottle to Mr. Berg?

A. It must be about three days after.

Mr. MARQUAM.—Q. About three days after. You remember that night that you went away so that these people could get upstairs; do you remember that time? A. Yes.

Q. How long after that was it that you gave it to the marshal? A. Just about three days, I think.

Q. Just about three days?

A. I don't remember.

Q. After you gave it to the marshal, did he come back and talk with you about the bottle again?

A. No.

Q. Did he come and get any other bottle from you?

A. No.

Q. He didn't. Are you sure?

A. I am sure. Only the one.

Q. Just the one. A. Yes. [508]

Q. That is the same bottle that Mr. Wooldridge gave you? A. Yes.

Mr. MARQUAM.—That is all.

Mr. ROTH.—That is all.

Testimony of Aaron Kennedy, for Defendant.

AARON KENNEDY, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. You may state your name.

A. Aaron Kennedy.

Q. What is your business, Mr. Kennedy?

A. At the present time I am tending bar.

Q. What were you doing upon the fourteenth day of February, 1916.

A. I was tending bar at the Washington Saloon.

Q. You were the regular bartender?

A. I am. Yes, sir.

Q. I will ask you if upon that day you sold any whiskey to Mr. Rose? A. I did.

Q. How much whiskey? A. A half pint.

Q. When did you sell it to him?

A. It is about four-fifteen, I think, something like that. I think about four-fifteen.

Q. Have you a record of your sales of liquor that you keep?

A. I have. Yes, sir. (Produces book.)

Q. Turn to the record of sales upon the fourteenth, to refresh your memory and be accurate about it, and state what hour the [509] liquor was sold, the amount and price.

A. On the fourteenth, at four-fifteen, to Mr. Rose, half a pint of rye and fifty cents was the price of it.

Q. What do you mean by four-fifteen?

(Testimony of Aaron Kennedy.)

A. In the afternoon.

Q. The saloon is not open at night-time?

A. Only until twelve o'clock.

Q. I will ask you to look at this bottle and state whether that is the bottle that you sold to Mr. Rose upon that day? (Showing witness Defendant's Exhibit "A.") A. No, sir.

Q. How can you tell?

A. Because that is bigger than the one I sold him. That is a dollar flask.

Q. You sold to Mr. Rose a fifty-cent flask, I understand you to say? A. Yes, sir.

Q. I will ask you if, subsequent to that time, Mr. Berg came to your place with a bottle for the purpose of having you identify it.

A. After that day, that is the day after?

Q. By "subsequent" I mean after that.

A. Yes.

Q. How long after that?

A. He came in the afternoon, after three o'clock in the afternoon, somewhere between three and five.

Q. Of what day? A. Of the fifteenth.

Q. That would be the next day? [510]

A. That would be the next day.

Q. What did he have with him when he came?

A. He had a bottle with him—a flask.

Q. What kind of a flask?

A. The first flask he had was a brown flask.

Q. What did he say to you at that time?

A. He asked me if that was the bottle I sold to Mr. Rose the day before.

(Testimony of Aaron Kennedy.)

Q. What did you tell him?

A. I told him "no sir."

Q. Then what happened?

A. He had another flask, similar to that, not quite as big, pretty near as big as that, and he asked if that was the one, and I told him, "no, sir."

Q. Did he have the two of them together?

A. He had one in each pocket.

Q. He showed you two? A. Yes.

Q. Neither one of which—(interrupted).

A. Was the one I sold him.

Q. Is that the bottle (indicating)?

A. Similar to that. I couldn't tell if that is the one, because there is a thousand alike.

Q. Just look at it and state whether or not one of the bottles he had was similar to that.

A. Similar?

Q. The same size and color?

A. The same size and color.

Q. What was the other bottle he had? [511]

A. It was a brown flask, a little heavier than that and a little shorter than that, but holds the same amount as that—a pint flask.

Q. Did he ask you with regard to each one of these bottles, whether they were the ones?

A. Yes, sir. And he asked me to show which kind I sold him, and I showed him which kind I sold him.

Q. Have you one of those with you? A. Yes.

Q. Did you bring it at my request?

A. Yes. (Produces bottle.)

(Testimony of Aaron Kennedy.)

Q. Is that the size bottle? A. Yes.

Q. The same kind of a bottle—(interrupted).

A. Yes.

Q. —that you sold to Mr. Rose? A. Yes, sir.

Mr. MARQUAM.—We offer this in evidence.

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection overruled. Bottle marked Defendant's Exhibit "B.")

Mr. MARQUAM.—You may cross-examine.

Cross-examination.

(By Mr. ROTH.)

Q. Let me see your record of the fourteenth, please.

A. Yes, sir. (Hands book to Mr. Roth.)

Mr. MARQUAM.—Pardon me a moment. One more question.

Q. These entries in this book are in your handwriting?

A. Part of them. What I sold is mine.

Q. This particular entry? A. Yes, sir. [512]

Q. What does your record show with regard to the sale of liquor to Mr. Rose in this vicinity of time, within two or three days, say.

A. Before that you mean?

Q. Yes.

A. I have not sold—I don't think I ever sold any to Mr. Rose since I worked down there, before or after, but I couldn't say positively.

Q. But no other liquor has been sold by you or the saloon as far as the records are concerned within a number of days before or after this day?

(Testimony of Aaron Kennedy.)

A. I never looked over the record, except to my recollection that I have not.

Mr. MARQUAM.—That is all.

Mr. ROTH.—Q. You say this is your handwriting? A. Yes, sir.

Q. When was the last time that anybody spoke to you about this sale to Mr. Rose?

A. Mr. Berg. I think that was the marshal's name, I ain't quite sure.

Q. Didn't someone talk to you since Mr. Berg talked to you about it?

A. Mr. Marquam did last night.

Q. Last night for the first time? A. Yes, sir.

Q. Isn't it a fact that the only reason why you know that that was a half pint is because of the entry that is made here? A. Yes. [513]

Q. You have no independent recollection of that sale, have you? A. I have, yes, sir.

Q. You have an independent recollection of the sale?

A. I remember because every time I sell a flask or a bottle of any kind I have to mark it down on account of the government inspector might come around.

Q. That was the only sale of bottled goods that was made that day, wasn't it?

A. I don't know if it was or not. I am not sure. It might possibly be. (Examines record book.) That is the only one I sold that day. Yes, sir.

Q. That was the only one that was sold in the place that day so far as the record shows?

(Testimony of Aaron Kennedy.)

A. So far as my record shows, that is the only one, as far as this book shows.

Q. Have you any other record?

A. No. This is the only record.

Q. As far as the record shows that is the only one that was sold that day?

A. Yes, sir. Mr. ——— was below me and above me (indicating on record book) Here is the dates, the eighth, ninth and tenth, you see. Three bottles of beer on the eighth, on the ninth, I sold two bottles of beer, on the tenth I sold a pint of whiskey, and on the eleventh and twelfth I didn't sell nothing. On the fourteenth I sold one bottle.

Q. That is your handwriting (indicating on book)?

A. This is mine, also this here. Here is my signature.

The COURT.—Can I see that book, please?
(Book handed to the [514] Court.)

Mr. ROTH.—Q. When did you make that entry?

A. At the same time as Mr. Rose bought it.

Q. And you swear positively that Mr. Berg, when he came there had two bottles neither of which was the bottle in question here; the bottle that was shown to you here?

A. The bottle that was shown, I couldn't swear that that is not the bottle because there is a thousand bottles like that.

Q. But one the same size as that?

A. He had one the same size as that.

Q. And the same quality? A. Yes.

(Testimony of Aaron Kennedy.)

Q. You sell flasks of whiskey, you sell the same kind of flasks as that?

A. Yes, sir, for one dollar.

Q. Don't you sell them for six-bits?

A. They are a size smaller, just the least little bit smaller.

Q. The one for six-bits is smaller than that?

A. It seems the least little bit smaller, yes, sir.

Q. And you say now that you have an independent recollection—(interrupted). A. I have.

Q. —that Mr. Berg brought in to you two flasks, and one was a brown flask? A. Yes, sir.

Q. You are sure of that?

A. I am sure of it, yes, sir.

Q. When was it that he brought that to you?

[515]

A. The day after I made this sale.

Q. You are sure it was the day after?

A. Well, I wouldn't positively say it was the day after this sale was made. He first came in and wanted to look at the book, and I showed him the book, and he said: "Why didn't you mark down what kind of liquor you sold him there"? That is the remark he made to me. I said: "Because the sale above it is marked, and I didn't stop to mark it down," which I should have done, I suppose, but I didn't. And he told me I should have marked it, what kind, and he showed me a book and he went off again.

The COURT.—What day was this?

A. Fourteenth of February.

(Testimony of Aaron Kennedy.)

Mr. MARQUAM.—Q. What do you mean was the 14th; the time that Berg came in there?

A. No. When I sold—when the sale was made.

Mr. ROTH.—Q. It was the next day, though, after you had sold this to Rose, that he came in there?

A. Well, now, I couldn't recollect if it was the next day or the day after, but it was close to that sale that was made.

Q. It was one or the other? A. Yes, sir.

Q. Either the next day or the day after?

A. Yes, sir.

Q. It was not any later than that?

A. Yes, sir. I don't think so.

Q. You are sure of that? A. Yes, sir.

Mr. ROTH.—That is all. [516]

Redirect Examination.

(By Mr. MARQUAM.)

Q. You have nothing to refresh your memory about the time that Mr. Berg came up there. That is just your best recollection?

(Plaintiff objects as not redirect examination. Objection overruled, but Mr. Marquam restates his question as follows:)

Q. The question was: With reference to your testimony as to the day that Mr. Berg came there with those bottles, whether you testified purely and simply from your recollection, or have you any data or memorandum you made?

A. I have no memoranda of that except that I am positive that it was either one—not any more than

(Testimony of Aaron Kennedy.)

two days after I sold that whiskey that he was down there.

Mr. MARQUAM.—That is all.

The COURT.—The Court will ask one or two questions.

Mr. MARQUAM.—Pardon me a moment if the Court will permit me to ask another question.

Q. Have you made an examination of the book so as to state positively whether within a few days, two or three days before that, or two or three days after that, you made any sales to Mr. Rose of whiskey, previous to that or subsequent?

A. No. I have not examined the book.

Q. Examine it now and determine what the record shows in that regard.

A. (After examining record book.) No, sir. None.

Mr. MARQUAM.—That is all.

By the COURT.—Q. Mr. Kennedy, does that book contain all your sales of bottled [517] goods? A. Yes, sir.

Q. Did you sell any bottled goods in December last year?

A. Yes. Well, now, I wasn't there all the way through December, but we did. But I understood that some of it had got—either one of the books got lost, or something, I don't know for sure, because I only started to work there about the 1st of November, and during that, first to that I was working there, I didn't keep no record myself, but the bartender working daytime he kept the record of it.

(Testimony of Aaron Kennedy.)

Q. So your record of sales in December is in some other book?

A. Well, now, I don't know where it is, Judge.

Q. Were you there in December?

A. I was working there in December.

Q. Did you sell any bottled goods in December?

A. Once in a great while. Yes.

Q. Where is your record of it?

A. I have not got no record of it.

Mr. MARQUAM.—I offer an objection to testimony in regard to sales of liquor at any other time, as not material in this case.

The COURT.—I very seldom get a chance to see these books.

Mr. MARQUAM.—It seems to me this is not the proper time to go into liquor license matters, and we except.

A. It happened this way: That during the month of January—I don't know Marshal Berg any more than a person told me that was his name—at some period of time in the latter part of January, he came to look at this book during the time that I was working there—I didn't know if he was license inspector or liquor inspector—but he was in there, and when I came to work that time he showed me this book [518] and told me to keep the record from that on.

The COURT.—I understand you. Any further examination?

Mr. MARQUAM.—That is all.

Testimony of J. E. Clark, for Defendant.

J. E. CLARK, a witness for defendant after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. Mr. Clark, you are the clerk of this court?

A. Yes, sir.

Q. Custodian of the records of this court?

A. Yes, sir.

Q. I will ask you to state whether or not you have amongst your records an indictment against J. P. Rose for the crime of rape.

(Plaintiff objects as irrelevant, incompetent and immaterial. Objection sustained.)

Mr. MARQUAM.—I want to state that we offer this evidence for the purpose of—(interrupted).

The COURT.—You may come to the desk with the stenographer and make your offer.

(Mr. Marquam now makes his offer at the desk of the Judge, in open court, but not in the hearing of the jury.)

Mr. MARQUAM.—The defense have called the witness J. E. Clark for the purpose of proving that there is in the records of the office of the clerk of this court a secret indictment against the witness for the prosecution J. P. Rose upon the charge of rape, upon which has been endorsed by the Judge of this court "Without Bail," for the purpose of showing the relations existing between the defendant in [519] this case and the said J. P. Rose at

(Testimony of J. E. Clark.)

the time of the offense alleged in this indictment, for the purpose of affecting his credibility as a witness as affecting his interest in testifying as a witness regarding the matters and things concerning which he did testify to in his direct and cross-examination.

(The jury, after being admonished by the Court in the usual manner, withdraw from the courtroom in charge of bailiffs and the last question asked by defendant's attorney and the offer made by him as above set forth, are discussed by Court and counsel and thereafter the jury returned into court.)

The COURT.—Have you any further examination of the witness?

Mr. MARQUAM.—No.

Mr. ROTH.—No examination.

Mr. MARQUAM.—We will except to the ruling of the Court.

The COURT.—An exception may be allowed.

(The Court after admonishing the jury as usual continues the trial until Monday, March 13th, 1916, at ten o'clock A. M., and the jury withdraw in charge of the bailiffs; and at ten o'clock A. M., Monday, March 13th, 1916, the defendant and his attorneys and the district attorney and the jury are present in court and the trial is resumed.)

Testimony of Frank R. Clark, for Defendant.

FRANK R. CLARK, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. You are one of the members of Dunham & Clark of the Red Cross Drugstore? A. Yes, sir.

Q. I will ask you if you have a chart or record of the temperatures that have prevailed in the town of Fairbanks for the last several years. [520]

A. I have, sir.

Q. Does your chart and record show what the temperature was on the twenty-second and twenty-third of December, 1914. A. Yes, sir.

Q. I wish you would refer to it and state what the temperature was on those dates.

A. On the twenty-second and twenty-third?

Q. First upon the twenty-second, then upon the twenty-third. A. Of 1914?

Q. Of 1914.

A. (Examining paper.) On the twenty-second it was nineteen above and twelve above. Twelve was the minimum and nineteen was the maximum.

Q. On the twenty-third.

A. On the twenty-third it was maximum twelve above and minimum six below.

Q. When were those temperatures taken? What time of day?

A. Those were taken between the hours of twelve midnight and twelve midnight.

(Testimony of Frank R. Clark.)

Q. When would the minimum temperature be taken?

A. The minimum temperature would be taken—we usually take it—we set the thermometer at twelve at night. So the registering filament would show the lowest point reached during the previous twenty-four hours. At what moment of time that would be, I don't know, but the registering filament would show the highest and lowest point during the twenty-four hours.

Mr. MARQUAM.—You may cross-examine.

Mr. ROTH.—That is all. [521]

Testimony of Bion A. Dodge, for Defendant.

BION A. DODGE, a witness for defendant, heretofore sworn, testified as follows, to wit:

Direct Examination.

(By Mr. MARQUAM.)

Q. With regard to the occasion of your having been to the Morency house that you testified to the other day, I will ask you to state if at any time that you were there, in your conversation with Mrs. Herrington you told her that you had been sent by the Court, or words to that effect? A. I did not.

Mr. MARQUAM.—You may cross-examine.

Mr. ROTH.—No cross-examination.

Testimony of W. H. Wooldridge, for Defendant.

W. H. WOOLDRIDGE, the defendant, a witness in his own behalf, being sworn, testified as follows:

Direct Examination.

(By Mr. MARQUAM.)

Q. Your name is W. H. Wooldridge?

(Testimony of W. H. Wooldridge.)

A. Yes, sir.

Q. You are the defendant in this case?

A. Yes, sir.

Q. And reside in Fairbanks? A. Yes, sir.

Q. How long have you lived in Fairbanks?

A. Since the spring of nineteen and three.

Q. How old are you?

A. Fifty-three years old next August.

Q. You are a married man?

A. Yes, sir. [522]

Q. Family? A. Yes, sir.

Q. How many children? A. Three.

Q. What business are you engaged in or have you been engaged in, Mr. Wooldridge, since you have been in Fairbanks?

A. I have a plot of ground in the town of Fairbanks that I garden as a truck patch, and work for wages; I have mined some.

Q. You have mined some? A. Yes.

Q. Where have you last worked regularly for wages, for whom?

A. For the Road Commission, I mean the Engineering Commission.

Q. The Alaska Railroad Commission? A. Yes.

Q. During the past summer? A. Yes, sir.

Q. When did you quit working for them?

A. I do not know the date; it was sometime in October of 1915.

Q. Since that time what have you been doing?

A. I have not been doing much of anything; just my own work around home.

(Testimony of W. H. Wooldridge.)

Q. You haven't been engaged for wages since that time?

A. No, sir. Except odd jobs occasionally.

Q. Do you know Laura Herrington? A. I do.

Q. And the Herrington family? A. Yes, sir.

Q. How long have you known them?

A. Since the winter of 1903-4.

Q. That is the first year that you came here?

A. Yes, sir.

Q. How had you become acquainted with the family?

A. I was employed by the School Board to teach a term of [523] school during the winter of nineteen three and four and some of those children went to school to me.

Q. You mean some of the Herrington children?

A. Of the Herrington children; yes, sir.

Q. I presume that Laura wasn't going to school at that time? A. No, sir.

Q. Some of the older children? A. Yes, sir.

Q. And would you say that you have known the family since that time? A. Yes, sir.

Q. Known George Herrington, Mrs. Herrington and the children? A. Yes, sir.

Q. You have heard the testimony that has been given in this case at the trial by Laura Herrington and the other witnesses? A. Yes, sir.

Q. I will ask you to state whether or not on or about the twenty-third day of December, 1914, you saw or met Laura Herrington near the Glass Block as it was described or anywhere in the town of Fair-

(Testimony of W. H. Wooldridge.)

banks and asked her to take a walk with you, or had any experience of that kind? A. No, sir.

Q. Did you see her at all at that time.

A. I don't remember of it.

Q. I will ask you to state directly on or about that date you took Laura Herrington to a cabin in any part of the town of Fairbanks, or in the vicinity of your house and had sexual intercourse with her?

A. I did not. [524]

Q. Did any circumstances occur at all where you and Laura Herrington were involved, or were together? A. No, sir.

Q. Have you and Laura Herrington, or were you and Laura Herrington, at or about the time mentioned ever alone together in any place in the town of Fairbanks or otherwise?

A. I have never been alone with her at any time.

Q. You were residing in the town of Fairbanks, of course, during February, 1916, the present year?

A. Yes, sir.

Q. I will ask you if you had occasion to go to the home of George Herrington during the month of February? A. Yes, sir.

Q. When was that?

A. The fourteenth of February.

Q. What was the occasion of your going to the house? A. I had met him on the eleventh.

Q. Who do you mean by him?

A. George Herrington.

Q. Where had you met him?

A. On First Street.

(Testimony of W. H. Wooldridge.)

Q. Whereabouts on First Street?

A. Near the Odd Fellows Hall.

Q. Did you have a conversation with him at that time? A. Yes.

Q. State to the jury what your conversation was with George Herrington at that time.

A. I walked up behind him and I said, "Hello, George. How are things coming," and he said, "Tough, damn tough. I haven't seen as hard a winter since I've been in Alaska." [525]

Q. Go ahead. If there was any further conversation just state what it was.

A. I told him that I was hard up too, but that I had lots of potatoes, and that if he needed potatoes that he could get them from me, and he says, "I may need them," but he says, "I may need them, but I have not got the money to pay for them," and I said, "Don't let that stand in the way; if you need the potatoes, you may have them."

Q. What did he say to that?

A. By that time we were at the Odd Fellows Hall and I stopped. I went into the hall, and he went on down the street.

Q. That was on the eleventh of February?

A. Yes, sir.

Q. Did you see him after that, between that and the fourteenth of February? A. No, sir.

Q. All right. What occurred upon the fourteenth of February when you went to Herrington's house? State what you went there for and what occurred.

(Testimony of W. H. Wooldridge.)

A. I went there to see if he wanted the potatoes at that time.

Q. How was it that you came to go to the house to inquire about it?

A. On Monday morning I was sorting my potatoes.

Q. Monday morning was what date?

A. Monday morning the fourteenth I was sorting potatoes.

Q. Where do you keep your potatoes?

A. In the cellar at home. I put the small ones in boxes to themselves, and those that are fit for table use I put in sacks. I have the small ones to boil for my chickens, and the others we use, and sell what I can. There is not [526] much of a demand for them.

Q. Go ahead.

A. I thought if Mr. Herrington wanted any potatoes I wanted him to take them at that time to get them out of my way.

Q. What did you do when you went down to the house? State what time it was when you went down.

A. About ten o'clock. I think it was about ten o'clock.

Q. All right. What was done? Just state in plain language and as briefly as you can what occurred when you went down to the house.

A. When I rapped at the door Mrs. Herrington opened the door, and I said, "Good morning. I have come to see Mr. Herrington about some potatoes that I was talking to him about," and she said,

(Testimony of W. H. Wooldridge.)

“Come in.” I asked her if Mr. Herrington was at home. She didn’t answer that question. At that I heard someone upstairs walking, and I stepped in. Laura Herrington came downstairs, came into the room where we were, and when she came in there I said, “How do you do?” She spoke first and said, “How do you do?” I answered her and I said, “You have grown considerable since I saw you last.” “Yes.”

Q. Right there. How long had it been since you had seen Laura Herrington prior to this time?

A. Really, I couldn’t tell you, Mr. Marquam.

Q. About how long?

A. I have seen her around over town.

Q. I mean how long had it been since you had seen her or had occasion to talk to her?

A. Oh, it had been two or three years since I had ever said anything to her at all before that. [527]

Q. Do you remember when the last time prior to this was that you had seen her?

A. The last time that I saw her I believe was probably the twenty-first of June.

Q. Where?

A. Here in Fairbanks when the celebration of the Native Sons and Daughters of the Golden North was held.

Q. You think you saw her at that time?

A. I think probably I saw her, but I couldn’t say positively that I did at that time.

Q. If you did see her at that time was that the

(Testimony of W. H. Wooldridge.)

last time you had seen her prior to being down at the house?

A. If I saw her any more, I don't remember.

Q. How long had it been prior to this time that we are now talking about, the fourteenth of February, that you had been to the Herrington house, that you remember?

A. I think it must have been four or five years. Perhaps longer than that.

Q. Had you seen or did you see Laura Herrington while they lived at Ester Creek? A. Yes, sir.

Q. Do you remember when that was?

A. I think it was the nineteenth of April, 1915.

Q. What were you doing out at Ester?

A. I was going out to the Ohio Roadhouse accompanying some provisions for the Government.

Q. That was while you were in the employ of the railroad commission? A. Yes.

Q. You say you saw her then. [528]

A. Yes.

Q. And talked with her?

A. No, sir. I spoke to her, or she spoke to us as we passed by. I was standing at the N. C. barn in company with Mr. Charlie Slater when she passed.

Q. It was just passing the time of day?

A. She passed and nodded her head and said, "How do you do" as she passed, and we answered her. That was all.

Q. Go back to the Herrington house on the fourteenth day of February. You had made this remark to her that she had grown since you had seen her.

(Testimony of W. H. Wooldridge.)

Now just from there where you left off, go ahead and tell what occurred.

A. At that point Mrs. Herrington asked to be excused. She said, "Laura will entertain you."

Q. All right. What did she do?

A. She stepped into the kitchen part of the house, but she was not out of my sight.

Q. That is Mrs. Herrington? A. Yes.

Q. Did she go upstairs at that time?

A. No, sir.

Q. What occurred then after she stepped into the kitchen, as far as you and Laura were concerned, what was said and what was done?

A. I asked Laura then why she was not at school. She said she had not been feeling very well.

Q. All right. What else?

A. Mrs. Herrington appeared in the door, or came back to the door and says, "You have never been in this house before, have you?" I says, "No. This is the first time I was [529] ever here." "Come upstairs and see how we have things fixed."

Q. What did you do?

A. She started upstairs and I followed her to a height that I could see around over the room, and told her things looked fine up there, and I came back down the stairs and she followed me. We went back into the front room. Then I asked her where I could find Mr. Herrington, and she said, "I think you will find him at Peoples, or maybe at the Fairbanks Corner. He is up town somewhere," and I said, "All right. I want to see him about some pota-

(Testimony of W. H. Wooldridge.)

toes that we were talking about," and I asked her then if they were out of potatoes. And she said they had enough for a day or two, she thought, and as I was leaving she said "If you don't find him, come back this evening."

Q. Mrs. Herrington said?

A. Mrs. Herrington said. And I asked her what time and she said, "Seven or eight o'clock. Oh, any time he will be here."

Q. You say that was said as you were leaving?

A. Yes, sir.

Q. Was there anything occurred in the way of talk or conversation on your part, between you and Laura Herrington, or you and Mrs. Herrington that you haven't already testified to? A. No, sir.

Q. Well, what did you do after this last conversation took place, as you were leaving the house, if anything?

A. I opened the door and walked out. Mrs. Herrington followed me and she closed the door behind me. [530]

Q. Which was this, the front or the back door?

A. The front door, yes, sir; and when she got out there she said, "Mr. Wooldridge, could you loan me a dollar," and I said, "Mrs. Herrington, I am hard up, but if you really need it I could let you have a dollar." "Well," she said, "We haven't anything to eat and I need it." I says, "I can let you have it for a short time," and I let her have the dollar.

Q. And she took it? A. Yes, sir.

Q. What else occurred?

(Testimony of W. H. Wooldridge.)

A. That was all. I went away.

Q. Did you at any time while you were in the house tell Mrs. Herrington that you had something for her? A. No, sir.

Q. Well, after you left on that occasion, when was the next time that you went back to the Herrington house?

A. I think it was somewhere about half-past eight that same evening.

Q. Did you go back to the Herrington house that morning within half an hour or thereabouts from the time you went there the first time? A. No, sir.

Q. You were not there at all? A. No, sir.

Q. You were there about half-past eight. What did you go there at that time for?

A. Because Mrs. Herrington told me that Mr. Herrington would be at home that evening, and I wanted to see when he would take those potatoes.
[531]

Q. What happened when you went there? Who was there?

A. Laura Herrington was there alone so far as I know.

Q. All right. What was said when you went to the door? Did you go to the front door at that time? A. Yes.

Q. All right.

A. Laura Herrington opened the door when I rapped on it. I asked her if her papa was home; that I wanted to see him about these potatoes. She says, "Come in. Papa is upstairs asleep."

(Testimony of W. H. Wooldridge.)

Q. Papa is upstairs asleep?

A. She might have said some other word besides papa. I don't just remember, but it was something to that effect.

Q. State what happened; what you did and what she did.

A. And I asked her to go up and wake him; that I would like to see him.

Q. What did she say?

A. She said, "Don't be in a hurry"; that mama would be home pretty soon. I says, "Where is your mama?" She said, "Up at Aunty's," and I says, "I wanted to see your papa."

Q. What did she do at that time, if anything?

A. She said, "Let me play you a piece on the phonograph," and she started the phonograph, played the piece probably half through, and I told her to stop that I was in a hurry, that I wanted to see her papa and get back.

Q. What did she say about that?

A. She turned it off, and at that moment two men came up, or I heard the sound of feet on the—coming, and they rapped on the door, and she opened the door and two men entered.

Q. Who were they? [532]

A. I didn't know at that time.

Q. You found out since?

A. I found out afterwards, yes.

Q. That they were who?

A. Mr. Miller and Mr. Berg.

Q. What occurred when they came in?

(Testimony of W. H. Wooldridge.)

A. The man that was in the lead asked the girl where her father was, and she said, "He is up town."

Q. Did she seem to recognize these men, or could you tell by her actions or talk?

A. I couldn't tell. I couldn't notice any change in her at all.

Q. She said that her papa was up town?

A. Yes, sir.

Q. All right. What else occurred?

A. And I think the next question was, "Then he is not at home?" and she said, "No," and they turned and went out.

Q. What did you do?

A. I got up and followed them. When she said that her father wasn't at home, I had no further business there, and I followed those men out.

Q. What did they do?

A. They went down the street, and I went up towards the Shaw House on Second Street. I didn't go very far up the street, and I was thinking about why she should make those answers. She answered me that her father was up stairs asleep, and she told those two men that he was up town, and it struck me very singular then and it aroused my curiosity, and I wanted to know who those two men were. [533] I went back to the door, and she opened it when I rapped, and I asked her who those two men were. She said, "I don't know, I guess it was two men from the creeks. They wanted to see papa."

Q. Did you go in the house? A. No, sir.

Q. Did anything else occur at that time?

(Testimony of W. H. Wooldridge.)

A. And I started away and she said, "You can bring those potatoes at any time."

Q. Bring them at any time?

A. Yes, and I says, "All right. I will bring them in the morning."

Q. Did you take them there in the morning?

A. Yes. I took them the next morning.

Q. What time?

A. Oh, about ten o'clock, I should judge.

Q. About ten o'clock?

A. That was Tuesday morning.

Q. Now, at the time you went there that evening, how long would you say that you were in the house all together?

A. Oh, a short time, six or seven minutes. It was not but a very short time.

Q. What were you wearing in the way of outer clothing? A. I had my fur coat on, outside coat.

Q. Did you remove the coat while you were in the house? A. No.

Q. Kept it on? A. Yes.

Q. What did you wear in the way of a hat or cap?
[534]

A. I was wearing my cap and I kept it in my hand.

Q. You had your cap in your hand all the time?

A. Yes, sir.

Q. Was there anything that had occurred at that time, Mr. Wooldridge, while you were in the house that has occurred in the way of conversation, or anything else that you have not now related, as far as you remember, to the jury? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Was there anything said by Laura Herrington or by you with reference to your meeting her or she meeting you at any other place? A. No, sir.

Q. Was the place known as Rose's bicycle shop or Rose's shop mentioned between you while you were there? A. No, sir.

Q. Anything of that kind? A. No, sir.

Q. When you delivered the potatoes next morning, who was there?

A. Mr. Herrington and Mrs. Herrington were the only ones that I saw.

Q. Did anything occur then in the way of talk or conversation?

A. When I rapped on the door Mrs. Herrington opened the door and I told her that I had brought those potatoes down, and she turned and spoke to Mr. Herrington and told him that I was there with the potatoes. He said, "All right. Bring them in here." He was standing in the kitchen door, and I carried them in and set them down in the kitchen.

Q. Have you, during this winter, or the last month or two, or during this time, been selling potatoes elsewhere in town [535] and delivering potatoes?

A. Yes, sir.

Q. Where ever you could sell them?

A. Yes, sir.

Q. When was the next time that you saw Laura Herrington, Mr. Wooldridge, after you had seen her down at the house? A. At Mr. Rose's.

Q. How did you come to go to Mr. Rose's, and when do you remember to have seen her?

(Testimony of W. H. Wooldridge.)

A. It was on the same evening that I delivered the potatoes.

Q. The same evening? A. Yes.

Q. How did you happen to be at Rose's?

A. I just called there to visit with Mr. Rose.

Q. Is that a habit or custom of yours, or otherwise?

A. Yes, sir. I called there very frequently.

Q. Give the jury some idea of how often you were there.

A. Oh, I judge I was there three or four evenings each week, probably more.

Q. You just drop in as you go by?

A. Yes. I don't make a special trip there. I drop in there.

Q. Is there generally upon your route when you are going down town or coming home?

A. Yes, sir.

Q. In the evening? A. Yes, sir.

Q. Now, from the time that you went to Rose's bicycle shop that evening, just tell this jury in detail, as near as you remember, exactly what occurred in the way of statements, [536] conversations, acts upon your part or upon Mr. Rose's part, and upon the part of the Herrington girl when she came there.

A. When I went into Mr. Rose's place of business there was a light burning in his front room, also one in his back room. I says, "Mr. Rose, you are very extravagant with your electricity." He says, "Yes. I was too lazy to get up and turn that light off.

(Testimony of W. H. Wooldridge.)

Turn it off, will you?" I turned it off and walked into the back part where he was.

Q. All right. Where was he when you went in there? A. He was lying on his bed.

Q. Well, now, where is that bed in reference to his shop and his back room?

A. It is pretty hard to—(interrupted).

Q. You heard the description that somebody came on the stand, I think it was Mr. Rose himself, as to the arrangement of that shop and his sleeping place. I will ask you if that description that he gave was substantially correct?

A. As nearly as I remember, yes.

Q. There is a partition back in the back part of the store. A. Part way across the room.

Q. And his room where he was lying is back of that? A. Back of that partition, yes.

Q. That is where he was lying when you went in?

A. Yes, sir.

Q. What was he doing when you got into the back room?

A. He was reading. He had a paper in his hand when I went in.

Q. All right. After you turned the light off and went back in there what did you do?

A. I think the first thing I asked him, "How is business to-day." [537] He said, "About as usual."

Q. Were you standing?

A. Yes. I stood there for a few minutes and talked to him.

(Testimony of W. H. Wooldridge.)

Q. Tell if you can, in a general way, what you were talking about, or if you can remember, after you got in there.

A. Well, we talked about the picture shows, and I looked at his clock and I think it lacked a few minutes of eight and I says, "Is your time right"? and he said, "No. It is seven minutes fast."

Q. Did you have a watch with you? A. Yes.

Q. All right. Go ahead.

A. And there might have been something said about keys. I don't remember whether there was or not.

Q. What directed your attention to the question of keys, the fact that you heard testimony about it?

A. I just heard this testimony about it. That is what directed my attention, but I don't remember.

Q. Did you ask at that time if Mr. Rose had an extra key to the front door, or a key to the front door, or asked him for the key to the front door, or anything of that kind? A. No, sir.

Q. Go ahead.

A. He asked me, "what is the news?" and I told him that I didn't know anything particular, and then I related to him about my experience down at Mr. Herrington's about those two men coming in and the girl making these two answers, that it aroused my curiosity, and he mentioned about those girls, meaning the Herrington girls and some others that are [538] running around over town. He said, "They are going all over town," so he understood, around to men's cabins soliciting money.

(Testimony of W. H. Wooldridge.)

Q. What else did he say?

A. He said, "Somebody is going to get in trouble with those girls yet. If I wanted to have anything to do with them I wouldn't do it while this grand jury was in session, because, he says "they will take them to Roth's office, and then before the grand jury and sweat them out until everybody that has ever had anything to do with them would—it would be known."

Q. Well, go ahead.

A. Now I think it was just about that part of the conversation that the door opened.

Q. Which door was that?

A. The front door. And Mr. Rose says "Who is that coming." And I leaned in my chair. I couldn't see around the corner of the edge of the partition, and I stayed there, or leaned far enough away until she came in sight, and he says, "Why that's Laura," and he says, "Hello" and she answered him, and she walked around back of my chair and as she got around by the side of me she says, "Somebody is following me. I want to hide."

Q. Somebody is following me. I want to hide?

A. Yes, sir.

Q. What did you say?

A. I didn't say anything. I got right up out of my chair and started to walk into the front room.

Q. For what purpose?

A. If there was anybody following her, I wanted to see who it [539] was.

Q. Well, now, at that particular time how were

(Testimony of W. H. Wooldridge.)

the lights? Was the light in the front shop still out? A. Yes.

Q. And the light in the back room was still burning? A. Yes, sir.

Q. Now what did you do?

A. I walked right out into the front room and turned that light on. Mr. Rose followed me right out and he said, "What did she say to you"? I said, "She says somebody is following her and she wanted to hide," He said, "Tell her to turn that light off then," and I walked back to probably fifteen feet of where I could see her and told her that Mr. Rose said, "Turn that light off if you want to hide." She said, "I will walk further back here."

Q. She said what?

A. "I will walk further back" or "Stay further back."

Q. Was the light turned off?

A. No, sir. I turned to Mr. Rose then and I said "I will step out here and see who that is that is following her," and I stepped to the front door, and when I turned to go out he was pulling his coat on, and he followed me right out. He put that light out in the front room as he passed it and came out to the door.

Q. Was the back light put out?

A. I couldn't tell because I didn't look back. I looked towards the Wilson corner.

Q. What do you mean by the Wilson corner?

A. On Second street, the Wilson Bath House corner on Second [540] street and I saw two men

(Testimony of W. H. Wooldridge.)

standing on the sidewalk and one looking around the corner, of the building, and I looked down the other way and I saw two men down there, that is at Bill McPhee's.

Q. Where was Mr. Rose at that time?

A. By the time I had taken in the situation that far Mr. Rose stepped out and he saw the same or at least he said, "There is somebody following her all right" and I said, "Get her out of here. She will get us into trouble."

Q. You said? A. Yes, sir.

Q. Or Mr. Rose said?

A. No. I said that, and Mr. Rose says, "She has got to get out of here," and he started right back. I says, "I will go up and see who these people are," and I started right up to Second street, and I got to the Wilson Corner—

Q. Up second?

A. Up Lacey street towards Second street.

Q. Mr. Wooldridge, after you got up there, who did you find they were?

A. Mr. McMullen and Mr. Hall, and I didn't recognize—(interrupted).

Q. Frank Hall?

A. Frank Hall and I didn't recognize the other at the time.

Q. What was said or done at that time?

A. When I saw who it was I just kept on going across the street and Mr. McMullen says "Hold on, I want to see you a minute" and I says, "All right. What do you want?" He says, "Come and go back

(Testimony of W. H. Wooldridge.)

to Rose's machine shop," and I went back there.

Q. Where was Rose during this time? [541]

A. He was staying there I think. I didn't pay any attention to what had become of him.

Q. When you got back to the shop was he there?

A. Yes, sir.

Q. Who else was there, if any one?

A. There were two other men there. I don't remember who they were.

Q. Deputy marshals were they?

A. Yes. Really I don't know whether they were deputy marshals. There was one man I didn't recognize at all.

Q. Was that a short heavy-set fellow? A. Yes.

Q. Do you know a man by the name of Roseburg?

A. Well I don't know him at all.

Q. After you got in there what occurred?

A. Then one of them, I don't know whether it was Mr. Hall or Mr. McMullen, says, "We will go down to the marshal's office."

Q. Did you do down?

A. We went down there, yes.

Q. Who do you mean by we?

A. They took—they started with me and I asked, I think it was Mr. McMullen, I says, "If you are going to take me down to the marshal's office, I want Mr. Rose to come down and give an explanation of what occurred."

Q. What had he said to you about going down to the marshal's office. What did he want to go down to the marshal's office for?

(Testimony of W. H. Wooldridge.)

A. He said, "I want to see what these meetings are for," and I [542] said, "I want to know too."

Q. And you went down?

A. I went to the marshal's office.

Q. You said you wanted to know too? A. Yes.

Q. And you went down to the marshal's office?

A. Yes.

Q. Who was there when you got down there?

A. There was John Wood that is deputy marshal Wood, and I think Mr. Berg.

Q. The deputy marshal? A. Yes.

Q. Anybody else?

A. I don't remember of anyone else.

Q. Was Miller there?

A. We met Miller and he went down with us.

Q. When you got to the office I mean who was all there? A. These were the men.

Q. That is Berg and Miller—

A. And Mr. Hall,—

Q. Anybody else? Where was the girl at that time?

A. —and Mr. McMullen and Mr. Rose and the girl.

Q. Rose and the girl were there? A. Yes.

Q. What occurred after you got into the office?

A. And Mr. Miller says to Mr. Berg, "You stay here and see that they don't talk to each other. I will call Mr. Roth."

Q. Did Roth come there?

A. And in a few minutes Mr. Roth showed up at the front door. He and Miller stood there and

(Testimony of W. H. Wooldridge.)

talked a minute, and he went. [543] out, and Mr. Miller came back into the private room—I could see through the door, see them—and Mr. Miller says to two of his deputies, I think it was Berg and Mr. McMullen but I wouldn't be sure who those were, he said, "You men come in here. I want you to hear what there is to be said," and he asked that girl then, "What did you go to Mr. Rose's for," and she said, "To meet him," and she pointed to me.

Q. Pointed to you?

A. Yes, sir. And he said, "What for?" Well, he said he wanted to do something to her.

Q. He said? The girl was talking now?

A. Yes.

Q. She said you wanted to do something to her?

A. Yes.

Q. All right.

A. And Mr. Miller said, "What is it?" and she said, "He said he wanted to get a piece off me." I says, "Mr. Miller, there is nothing to that, I deny it." Mr. Miller says then, "What were you doing at the Herrington place last night?"

Q. At his house?

A. Yes. At the Herrington house.

Q. Yes. Go ahead.

A. And I told him I went there to see about some potatoes. He says, "Have you been back there since?" and I told him no. He says, "Do you mean to say that you didn't go there immediately after you left that evening?" and I said, "Yes. I went

(Testimony of W. H. Wooldridge.)

back to the door to see who was there—those two men.”

Q. Well, what other conversation occurred there in the marshal's [544] office?

A. And he said, “I am going to give this a thorough investigation. That will be all for to-night.”

Q. Let me direct your attention to one point. Somebody, I think Mr. Miller, testified something about the girl saying something to you or about you, about lying. A. Yes, she did.

Q. What was there said on her part or upon your part at the time that remark was made?

A. When I says, “Mr. Berg”—or “Mr. Miller, there is nothing to that. I deny it,” she says, “He is lying.”

Q. Then you left and went home?

A. Yes, sir. No, I didn't leave and go home. I left and went to Mr. Dodge's office.

Q. You went up to Mr. Dodge's office?

A. Yes, sir.

Q. When were you arrested, Mr. Wooldridge?

A. On Saturday, the nineteenth of February.

Q. And this conversation was upon the fifteenth?

A. Upon the fifteenth.

Q. This talk down in the marshal's office?

A. Yes, sir.

Q. Were you at the marshal's office between those times? A. No, sir.

Q. I will ask you, Mr. Wooldridge, if at any time that you were in Rose's shop that evening that you said anything to anyone about—not to anyone, but

(Testimony of W. H. Wooldridge.)

to Mr. Rose about having an appointment or a date with Laura Herrington? A. I did not.

Q. Did you have any conversation or talk with Mr. Rose at that [545] time with reference to Laura Herrington further than to relate to him what had occurred down at the Herrington house?

A. That is all we said about her.

Q. I will ask you if upon the fourteenth day of February, 1916, or at any other time you gave Mrs. Herrington any whiskey? A. No, sir, I did not.

Q. I will ask you if upon the fourteenth day of February, 1916, you got any whiskey?

A. Yes, sir, I did.

Q. Just state the circumstances of that occurrence.

A. I had Mr. Rose to go and get me a bottle of whiskey.

Q. What do you mean by a bottle of whiskey?

A. A small flask.

Q. For what purpose? What did you want it for? A. I wanted it to break a cold.

Q. What did you do with the whiskey?

A. I put some quinine in it and took it for a cold.

Q. What did the whiskey cost? A. Fifty cents.

Q. What size bottle was it?

A. About a half-pint bottle.

Q. By a bottle you mean a flask.

A. A flask, yes, sir.

Q. I show to you two flasks here and ask you to state if they are either one similar to the kind you got from Mr. Rose.

A. Yes. Something like that small one there.

(Testimony of W. H. Wooldridge.)

Q. Nothing like that large one?

A. No, sir. [546]

Mr. MARQUAM.—The small one is marked Defendant's Exhibit "B." You may cross-examine. Just another question.

Q. Mr. Wooldridge, have you ever been convicted of any crime? A. No, sir.

Q. Ever arrested for any offense? A. No, sir.

Q. I mean arrested before upon any offense before the time you were arrested in this case.

A. No, sir.

Q. Do you remember, Mr. Wooldridge, when it was that you bought that whiskey, with regard to what part of the fourteenth, what part of the day?

A. It was in the afternoon.

Q. Sometime in the afternoon? A. Yes, sir.

Mr. MARQUAM.—You may cross-examine.

Cross-examination.

(By Mr. HEILIG.)

Q. What time did you say you went to the Herrington house about these potatoes first?

A. About ten o'clock on the fourteenth.

Q. On the fourteenth of February that was?

A. Yes, sir.

Q. About how long do you think you stayed there?

A. About fifteen or twenty minutes.

Q. Are you sure it was not more than fifteen or twenty minutes? A. I don't think so.

Q. Could it have been more than half an hour?

A. I don't think so. No, I don't think it was.

[547]

(Testimony of W. H. Wooldridge.)

Q. What was the first talking you did or the first thing that was said after you came to the door?

A. By me?

Q. By anybody.

A. Mrs. Herrington opened the door and said, "How do you do," and I answered her the same and said, "How do you do," and asked her if Mr. Herrington was at home, that I was making arrangements with him about some potatoes.

Q. You are sure that was in the morning now?

A. Yes, sir.

Q. About ten o'clock or around there?

A. Yes, sir.

Q. Was there anybody else there at that time?

A. Yes, sir.

Q. Who was there? A. Her daughter Laura.

Q. Did you see her then? A. Yes, sir.

Q. When Mrs. Herrington opened the door did you step in immediately?

A. No. I stepped back three or four steps when I rapped, so as not to be right in the person's face who opened the door, and when she opened the door she said, "Good morning," or "How do you do," and I asked her that question then regarding if Mr. Herrington was home and that I was making arrangements to let him have some potatoes.

Q. Then she asked you to come in, I believe you stated. A. Yes, sir.

Q. And you went in? [548] A. Yes, sir.

Q. And was Laura Herrington there?

(Testimony of W. H. Wooldridge.)

A. Yes, sir. No, sir, I didn't see her when I went in.

Q. I asked you who was in there at that time when you went in and you said Laura Herrington was there. A. She was upstairs.

Q. How did you know she was upstairs at that time?

A. I heard her, I heard somebody upstairs, and she came down.

Q. You want us to understand now that she was not in there when you first entered?

A. She was not in that room.

Q. When you got in there, you didn't know she was there at all.

A. Yes, sir. I heard her footsteps.

Q. Could you tell her footsteps when you heard them? A. I heard someone walking.

Q. When you first entered did you know Laura Herrington was there at all? A. No.

Q. You are positive you didn't know she was there? A. I didn't know she was there.

Q. But you heard some footsteps upstairs?

A. Yes, sir.

Q. When did she come down—(interrupted).

A. Immediately.

Q. —relative to the time you entered.

A. Immediately.

Q. Did her mother call her?

A. No, she didn't call her.

Q. She just, as far as you know, voluntarily came downstairs. [549] What was the first thing

(Testimony of W. H. Wooldridge.)

Laura said after she came downstairs, if anything?

A. I don't remember whether it was "Good morning" or "How do you do."

Q. She spoke to you before you spoke to her?

A. Yes, sir.

Q. And what did you first say, the first words now that you said to Laura?

A. I said, "How do you do. You are growing" or "You have grown since I have seen you." I don't remember just the words that I said.

Q. How long would you say and state positively the last time that you remember of speaking to Laura before that time?

A. It might have been a year or so since I remember that I spoke to her on Ester Creek on the nineteenth of April as she was passing along on the sidewalk and I was standing there with Mr. Slater.

Q. That was merely speaking to her?

A. Just spoke as she passed. She nodded her head to us and spoke and we answered her.

Q. That was April, 1915. That would be a year ago? A. Yes, sir.

Q. Prior to that time when was the last time, about when, that you had talked to her?

A. Really I couldn't tell you, but it must have been a year or so before that.

Q. Had you been in the habit of being with her, that is, talking to her frequently?

A. No, sir. [550]

Q. Never at any time? A. No, sir.

Q. Never had been seen with her to any extent

(Testimony of W. H. Wooldridge.)

that you know of?

A. I don't think I have been seen with her at all, for I have not been with her.

Q. Now, if you got to the house about ten o'clock we will say, after you got to the Herrington house about ten o'clock, what time did you leave?

A. I didn't notice the time at all, but I was only there a short time, fifteen or twenty minutes.

Q. Assuming then that you got there at ten o'clock you would have gotten away by half-past?

A. Yes.

Q. In a space of time of a half an hour?

A. Yes.

Q. When was the next time that you came to the Herrington house that day?

A. About half-past eight that evening.

Q. You are sure that half-past eight is the first time you came to the house after this time in the morning?

A. Yes, sir.

Q. You are positive about that?

A. Yes, sir.

Q. What was the first thing you did when you got to the house about half-past eight?

A. Rapped on the door.

Q. Who came to the door?

A. Laura Herrington.

Q. Was there anybody else there that you could see then?

A. No, sir. [551]

Q. Did you go in the house?

A. Yes, sir.

Q. Did she ask you to come in?

A. Yes, sir.

Q. What did you do when you entered the house?

A. I sat down.

(Testimony of W. H. Wooldridge.)

Q. Did you keep your coat on? A. Yes, sir.

Q. What did you do with you hat?

A. I kept it in my hand.

Q. What kind of a hat were you wearing that night? A. I was wearing my cap.

Q. Your fur cap? A. Yes, sir.

Q. You kept that in your hand. Now, what was said between you and Laura at that time after she asked you to come in and you went in and sat down?

A. As I went in, before I sat down, I told her I wanted to see her papa about those potatoes, was he home. She said yes he was upstairs—upstairs asleep.

Q. She said asleep, did she? A. Yes.

Q. Had you looked for Mr. Herrington at all before that, Mr. Wooldridge, that day or that evening to see him?

A. I was up and down the streets several times but I didn't go in the saloons and look for him where they had indicated.

Q. Who had indicated?

A. Mrs. Herrington told me that I would perhaps find him at Petree's or the Fairbanks Corner.
[552]

Q. But you didn't go there and look.

A. I didn't go in there and look for him as I thought maybe I would see him around during the day, but I didn't. When I went home I kept that appointment then in the evening.

Q. Had you made an appointment for the evening?

(Testimony of W. H. Wooldridge.)

A. Mrs. Herrington told me if I would call there at seven or eight o'clock, or any time in the evening that I would find Mr. Herrington at home.

Q. Had she told you that you would find him at Petree's or the Fairbanks Corner in the daytime if you would look?

A. She said I may find him there.

Q. But that he would be home in the evening?

A. Yes, sir.

Q. She told you that her father was upstairs asleep, I believe you said.

A. Yes, sir.

Q. What happened after that downstairs in the house, what was said and done?

A. She turned the phonograph on and played a record.

Q. Do you know what the record was?

A. I don't remember.

Q. Did she play more than one record?

A. No. She played one perhaps about half through, and I asked her to turn it off, that I wanted to see her father.

Q. You didn't even hear the record through?

A. No. I asked her to go upstairs—(interrupted).

Q. Did you hear any footsteps at the door before that record was played through?

A. No. [553]

Q. Or I mean before it stopped?

A. No.

Q. When did you first hear the footsteps at the door or near the door?

A. She turned that record off and I says, "Go up and tell your papa I want to see him," and at that I

(Testimony of W. H. Wooldridge.)

heard those footsteps at the door.

Q. Was that all within the space of a few seconds?

A. Yes. Well, a minute or so.

Q. Had she started upstairs? A. No, sir.

Q. Did she go upstairs at all? A. No, sir.

Q. What did she say, if anything, when you told her to go upstairs and tell her papa that you wanted to see him?

A. She told me not to be in a hurry, and then I asked her where her mamma was and she said, "Up at Aunty's."

Q. Where were you sitting with reference to the door? I presume this is the front door that you refer to. A. Yes.

Q. Where were you sitting with reference to the door?

A. At the corner of the building, behind the door when the door would open. Not exactly behind it, but the door would open near me when it would open. Almost the position that I am here to this door (indicating door in courtroom) with the exception that I had my back to the door. I sat here (indicating).

Q. You really faced the door, that is, when the door would open, you would be facing the door?

[554] A. Yes.

Q. That is parallel with the front side of the building you would be looking. Do you understand what I mean? A. I don't know that I do.

Q. Would your line of vision be parallel with the front wall of the building where the door was?

(Testimony of W. H. Wooldridge.)

A. Yes.

Q. If you would look straight ahead from where you were sitting? A. Yes.

Q. When this door opened, you said two men entered? A. Yes.

Q. Did they come inside the house? A. Yes.

Q. Did they shut the door? A. Yes, sir.

Q. Then these two men were clear inside the house with the door shut?

A. Yes, sir, and their coat collars turned up.

Q. Were you looking straight at them?

A. Yes, sir, but I didn't see their faces.

Q. And you swear that you didn't know at that time who the men were? A. I did not. No, sir.

Q. And you are sure that they came right inside and the door was shut? A. Yes, sir.

Q. What was the first thing said by the men or either of them?

A. The man who was in the lead asked Laura where her father was. She said, "Up town." [555]

Q. What else?

A. And I think he said, "Then your father is not at home" and she says, "No, he is up town," and they turned and left, turned with their faces from me as they stepped out.

Q. Yes? Did you say a word at all while they were there?

A. I don't think that I spoke at all while they were in the room.

Q. Do you know if either of them spoke to you?

A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Did they say "Hello" or anything to you?

A. No, sir.

Q. Are you sure they didn't?

A. If they did, I don't remember.

Q. You wouldn't be positive whether they did or not?

A. They didn't turn so I could see their faces while I was there—while they were there.

Q. How long did you stay after they left, Mr. Wooldridge?

A. It was not a minute I don't think, because I got right up and followed them out. They possibly might have been twenty feet from the house.

Q. When you went out?

A. When I went out of there. They may have been a little farther, but not much.

Q. After you were all outside, that is, the three of you, the two men and yourself, you were within one hundred feet of them anyway.

A. Yes, I should say a hundred feet, within that, yes, sir.

Q. And which direction do you say they went from the house?

A. They went downstream or down the street.

Q. On Second Avenue would that be?

A. Yes, sir. [556]

Q. And you came upstream on Second Avenue?

A. Yes, sir.

Q. Did you follow them at all? A. No.

Q. They went one way and you went the other?

A. Yes.

(Testimony of W. H. Wooldridge.)

Q. Where did you go?

A. I went up Second street possibly two hundred feet, not to exceed three hundred feet, and I was thinking about the answer that she made me, the one she made to me and the one she made to them, and it aroused my curiosity, and then I wanted to know who those men were, and I turned and went back and asked her.

Q. Then you would state to the best of your recollection that you didn't come upstream from there, from the house, more than a block?

A. I don't think I did.

Q. And while you were going this block you were pondering about them, thinking this thing over, and decided to go back. Is that the idea? A. Yes.

Q. Did you go up this way as far as the Shaw House? A. I don't think so. No, I didn't.

Q. You are sure you didn't? A. No. I didn't.

Q. How long would you say you were gone from the Herrington house before you went back that time, that is, went back to the door, I believe you said?

A. Well, I walked slowly along. I was thinking over it, and I [557] don't know how long.

Q. Can you give us any estimate at all?

A. No. I won't.

Q. Would it be one minute or one hour?

A. It wouldn't be an hour and it was more than a minute.

Q. Was it five minutes?

The COURT.—Q. Did you say it was more than a

(Testimony of W. H. Wooldridge.)

minute or no more than a minute?

A. More than a minute. It was not an hour but it was more than a minute.

Mr. HEILIG.—Q. I want to get it as near as you can state. A. I don't remember.

Q. Was it five minutes?

A. I don't remember how long it was, because I was walking there and pondering over what—(interrupted).

Q. Were you walking all the time, that is, after you left the house when these two men left?

A. No.

Q. Were you standing?

A. When I got away, up the street a ways, I turned to see where those men were, and they were standing down below the house a ways. They seemed to be talking there.

Q. You could see them?

A. Then they turned and went on, and I went on my way up the street.

Q. How far had you gone, as near as you can remember, from the house when you first stopped and looked around to see where they were? [558]

A. Oh probably fifty feet or such a matter.

Q. And how long would you say that you stood there and watched them?

A. I didn't stand more than a minute or so.

Q. More than a minute or so?

A. Possibly not that long.

Q. Then I understand you turned and continued on upstream. A. Yes, sir.

(Testimony of W. H. Wooldridge.)

Q. How far then did you go before you stopped again? A. Well, I didn't go to the Shaw House.

Q. Did you stop again before you stopped and turned around to go back?

A. No. I don't think I did.

Q. Then you turned around and went back. Did you stop on the way back before you got to the house?

A. No, I don't think so. If I did, I don't remember of it.

Q. Do you remember whether it was cold or warm that night?

A. Well, it was fairly cold. I do not know the temperature, but it was a cold evening.

Q. Do you remember whether it was very cold or not, that is, to the best of your recollection. I don't want to know the exact temperature.

A. Well, I don't know.

Q. You don't remember?

A. No. I don't remember.

Q. Were you on Second Avenue all the time after you left that house until you went back that time?

A. Yes.

Q. Were you in the street or on the sidewalk?
[559] A. No, I was in the street.

Q. Then the best of your recollection is that you came upstream two or three hundred feet?

A. Yes, sir.

Q. Now Mr. Wooldridge, you interviewed somebody representing the Alaska Citizen about this potato deal, did you not?

(Testimony of W. H. Wooldridge.)

A. I talked with Mr. Caskey, yes, sir.

Q. Did you talk with Mr. Hess? A. No, sir.

Q. Did you give an interview to Mr. Caskey?

A. No, sir. We just talked the matter over.

Q. Did you give him any written statement, or anything? A. I did not.

Q. You talked the matter over? A. Yes, sir.

Q. Did you read what purported to be an interview with you in the Alaska Citizen of the twenty-first of February? A. Yes, sir.

Q. Was that a correct statement?

A. No, sir. Some of that is not right.

Q. What of that is not right?

A. I couldn't tell you unless I got the paper and read it over. I remember of reading some of the things at the time. I might state one that I can call to mind now.

Q. What was that?

A. That in that article it stated that I had told Mr. Caskey that I was being investigated by the grand jury. I told Mr. Caskey that I was being investigated by Mr. Miller, and that I had told Mr. Miller that I would like for him to make a thorough investigation, not the grand jury. [560]

Q. Well now, when you spoke to Mr. Caskey did he write down what you said? A. No, sir.

Q. Where did you see him when you spoke to him?

A. Over at his office.

Q. Over at the Citizen? A. Yes, sir.

Q. Did you go over there to tell this to him?

(Testimony of W. H. Wooldridge.)

A. Yes, sir. I went over there on purpose to tell him.

Q. Voluntarily of your own volition.

A. Yes, sir.

Q. And you say he didn't take it down and make notes of any kind?

A. No. He was not using his pencil.

Q. Were there any other incorrect statements in that interview? We will call it an interview. I mean the statement which was published.

A. Well I can't call them to mind just now.

Q. Did you read that the morning after it was published or the morning it was published?

A. Yes.

Q. Did it appear to you at that time that there were any inaccurate statements other than the one that you just stated about the investigation?

A. There is something, I just don't remember how that is worded, in regard to bringing an indictment. I don't recall now just how it is worded in that article, but as I recall it, I spoke to Mr. Caskey about it that I didn't see anything that had happened that could be—that there could be an indictment against me. [561]

Q. Did you tell Mr. Caskey about your having gone down to the Herrington house about potatoes?

A. Yes.

Q. Did he have that in the paper right?

A. The part that he had in the paper, if I remember, said that I called there to see about potatoes about half-past eight. He didn't tell about me being

(Testimony of W. H. Wooldridge.)

there in the morning?

Q. I see. That part was not complete then?

A. That part was incomplete. What was stated there was correct, but it was incomplete.

Q. Did you ever speak to Mr. Caskey about his not having the statement in just exactly the way you had stated it to him?

A. No, I didn't see Mr. Caskey.

Q. You haven't spoken to him since about that statement? A. No. I have not had any chance.

Q. Did you try to correct it in anyway? A. No.

Q. Not in any way you didn't try to correct that statement?

A. Well, I spoke to my attorney, Mr. Dodge about it and told him that that was not correct.

Q. When did you speak to Mr. Dodge about that, about what time?

A. Well it was during the week some time.

Q. Shortly after it was published? A. Yes.

Q. It came out on Monday of course. It was soon after that was it?

A. Yes. I spoke to him in the Federal Jail.

Q. When did you have occasion to read that article, when you were in the jail?

A. Yes, sir. [562]

Q. You saw the paper did you?

A. Yes. The paper was brought in there.

Q. Did you state to him any other inaccuracies besides the one you have spoken of just now?

A. I don't remember, Mr. Heilig.

Q. Did you and Dodge go over that article to-

(Testimony of W. H. Wooldridge.)

gether? A. No.

Q. Did you and Mr. Marquam go over it?

A. No.

Q. Have you read it more than once yourself?

A. Well, I might have gone over it a couple times there in the jail.

Q. You know pretty well what is in it, do you?

A. Yes. That is, I understood it at the time. I don't remember just each item.

Q. Do you remember the occasion of your telling the facts therein stated to Mr. Caskey?

A. Yes. I remember having the conversation with Mr. Caskey.

Q. When was that?

A. I think that was about Wednesday or Thursday following the night that I was at Mr. Rose's.

Q. Did you at that time attempt to state the facts as you understood them to Mr. Caskey, that is, of your visit down to Herrington's? A. Yes.

Q. Down at the Herrington residence the evening of February fourteenth?

A. Yes. I intended to tell him the story.

Q. Can you now think of any other thing which was stated in that statement as printed which was not as you told Mr. [563] Caskey?

(Defendant, by his attorney Mr. Marquam requests that if the witness is to be further questioned with regard to the statement, that the statement, should be produced and submitted to the witness so that he can refresh his recollection as to what is in the statement.)

(Testimony of W. H. Wooldridge.)

Q. I believe you stated Mr. Wooldridge, that you had not seen Laura with the exception of that time in April, which was a year ago, or did you state when you had last seen her prior to that time in April, 1915?

A. No. I didn't say. I said I hadn't seen her to speak to her. I was in here from the survey work on the twenty-first of June, and she may have been here and I might have passed her several times during the day.

Q. Just to see her on the street?

A. Just to see her on the street. And that is all I have seen her since at any time.

Q. That time at Ester you said you merely said, "Hello," something to that effect, or she said, "Hello" to you first.

A. Yes. She just nodded her head and spoke to us as she passed by.

Q. After you went back to Herrington's house, after you had taken this walk up towards the Shaw House, when you went back that time, what did you say to Laura, if anything?

A. When she opened the door, I said, "Laura, do you know who those men were that were here"?

Q. Did you tell her at that time that you were suspicious from the way those men had acted?

A. No, sir.

Q. Did you say anything of that kind to her at all? [564]

A. I said—When she said, "I don't know who they were," I said, "I would like to know." She said, "I

(Testimony of W. H. Wooldridge.)

think they are some men from the creeks.”

Q. You didn't tell her that you were suspicious and wanted to know who they were?

A. No. I didn't say a word about it.

Q. When you asked her who they were she said they were some men from the creeks? A. Yes.

Q. Did you tell her you were going to follow the men to find out who they were? A. No, sir.

Q. Well now, Mr. Wooldridge, if you had not seen Laura to talk to at any time with the exception of the times you have mentioned, why were you curious to know who these men were?

A. On account of the answer she had made to me when I asked for her father, and the answer she made to them when they asked her where her father was.

Q. The only things about those answers that didn't agree was that she had told you that he was upstairs and told them that he was down town?

A. Yes, sir.

Q. You knew or thought that she was lying to one of you?

A. Yes, she was lying to one or the other. And those men came in there, collars high, with their collars turned up, and then they turned from me. I didn't see their faces at all. It aroused my curiosity.

Q. That was, as you stated, a very cold day?

A. Yes. [565]

Q. The fact that their collars were turned up wouldn't be anything unusual would it?

(Testimony of W. H. Wooldridge.)

A. No. That wouldn't be anything unusual, and I didn't—

Q. It was the mere inaccuracy of the statement, or the difference in the statements she had made to you and to the two men that aroused your curiosity to such an extent that you made a special trip back to see about it? A. Yes. To see who they were.

Q. That was the only thing? A. Yes, sir.

Q. Why were you interested to know who they were, even if you thought she had lied to you?

A. That was just the reason I wanted to know, because if she lied to me I wanted to know why those men were there, or not why they were there, but who they were.

Q. Why did you want to know who they were? What difference did it make to you?

A. Because she had told those two men one thing and told me another.

Q. You didn't know Laura Herrington at that time any more than to just say "Hello" to her?

A. I have known her since childhood.

Q. You had had nothing to do with her?

A. No. I hadn't had anything to do with her.

Q. Had you had anything to do with the Herrington family besides this potato deal? A. No.

Q. You wanted to find out what was going on, did you?

A. Not particularly, but I wanted to find out why she would make [566] me that answer and make those other men another answer.

(Testimony of W. H. Wooldridge.)

Q. So it was just a matter of curiosity with you then? A. Yes, sir.

Q. Did you go home immediately after that, Mr. Wooldridge, that is, after you left her house?

A. Yes, sir.

Q. Are you sure that you didn't go home the first time you left her house in the evening?

A. No. I didn't go home the first time.

Q. Is that all the conversation that you had with Laura Herrington that time you went back to find out who the men were, just what you have related?

A. Yes. What I related on the questions to Mr. Marquam. Yes, sir.

Q. It was merely regarding who these men were and what they were there for, the conversation?

A. Yes, sir.

Q. Nothing else?

A. And then as I left she volunteered that I could bring those potatoes any time.

Q. Where did you go from there?

A. I went home.

Q. Do you remember about what time you got home? A. No, I don't.

Q. Did you go back to Herrington's house again that night?

A. After my second trip back there?

Q. Yes. A. No.

Q. After you went home then you didn't leave home that night? A. No, sir. [567]

Q. Was that the first time you had been home that night since you had left there that evening?

(Testimony of W. H. Wooldridge.)

A. Yes.

Q. Then you didn't go back home, and away, and then back again? A. No, sir.

Q. I believe you stated that you did deliver those potatoes the next morning.

A. Yes, sir.

Q. About what time?

A. About ten o'clock. It might have been a little before ten. About ten o'clock.

Q. Who was there that morning when you came?

A. I only saw Mr. Herrington and Mrs. Herrington.

Q. You didn't see Laura that time?

A. No, sir.

Q. What was Mrs. Herrington doing?

A. The first I saw her she was standing in the door. I rapped on the door and she answered it.

Q. Did you see Mr. Herrington when you entered the house? A. Yes, sir.

Q. What was he doing?

A. He was standing in the kitchen door.

Q. He was where?

A. She was at the front door. She came to the front door and opened that, and when she opened it he was standing in the kitchen door.

Q. You came in the front door, did you?

A. Yes.

Q. And you could stand in the front door and see the kitchen door in the house? [568]

A. Yes.

Q. Could you see right through the house?

(Testimony of W. H. Wooldridge.)

A. I couldn't see through the house, but I could see the kitchen door.

Q. Was he standing?

A. Yes. He was standing.

Q. Did you go back into the kitchen? A. Yes.

Q. Did you take the potatoes back there?

A. Yes.

Q. How many potatoes did you take there, one sack or two? A. One sack.

Q. What did you do with them?

A. I set them down on the floor in the kitchen.

Q. Did Mrs. Herrington go back to the kitchen with you? A. Yes.

Q. How long did you stay there at that time, about?

A. I don't think I was there more than three or four minutes.

Q. And you saw no one at that time except Mr. and Mrs. Herrington?

A. Yes, and Mr. Ed Hall came as I was leaving. I met him right at the door. I was binding the blankets back on my sled and he came along.

Q. Did you have any conversation with him at all?

A. Just passed the time of day as he walked in.

Q. When was the next time that you saw Laura Herrington, after this night that you left her at the door in her home?

A. At Mr. Rose's store, at the machine-shop.

Q. When was that?

A. It was the same day that I delivered the potatoes.

(Testimony of W. H. Wooldridge.)

Q. At night? A. Yes, sir. [569]

Q. What time would you say that it was when you saw Laura?

A. I should judge it was about eight o'clock.

Q. Where had you been that evening? Before you went to Rose's where had you been that evening of the fifteenth, that would be, I believe.

A. I was at the Odd Fellows' Hall.

Q. What time did you go there?

A. I went there directly after supper, possibly seven o'clock.

Q. What was going on at the Odd Fellows' Hall which required your presence, if anything?

A. I had built the fires there during the afternoon, and went back to take care of the fires and see that the room was in proper shape for the entertainment or for the meeting that was to be held that evening by the Rebekahs.

Q. What was there that required your presence there, if anything, besides tending to the fires?

A. Not any.

Q. You didn't have to stay there until any special time?

A. No. I went there and fixed up the fires and remained there until they gathered for their meeting.

Q. When you left there where did you go?

A. I went to Mr. Dodge's office.

Q. About what time was that. Do you remember?

A. I thought it was right close to eight o'clock when I left there.

(Testimony of W. H. Wooldridge.)

Q. I am just asking what your recollection is of it yourself. You thought it was about eight o'clock?

A. It was about eight o'clock when I was at Mr. Dodge's, near there. It was not eight, because it was eight when I was over at Mr. Rose's. I was only at Mr. Dodge's just a [570] few minutes.

Q. Was Mr. Dodge there?

A. When I went to Mr. Dodge's there were several men there, and they seemed to be engaged in something and I only stayed a few minutes.

Q. Did you have any conversation with anyone there at that time?

A. No. I don't think I did, only passing the time of day.

Q. And you think you just stayed there a few minutes. Then did you go across the street to Rose's?

A. Yes.

Q. Practically straight across?

A. I went straight across to the Wilson corner on Second and then down the street.

Q. What time would you say it was that you entered Rose's then, as near as you can remember?

A. Well, I remember it was not quite eight o'clock by his time, and when I looked at his time I asked him if his time was right, and he told me it was fast.

Q. Is that just what he said, it was fast, or what did he say?

A. I think he said it was seven minutes fast, the exact words that he said.

Q. Now, when you first entered Rose's shop, how were the lights, that is, with reference to the front

(Testimony of W. H. Wooldridge.)

room and the back room?

A. He had one light in the front room.

Q. Burning?

A. Burning, and one in the back room burning.

Q. Was it a big light, or what kind of a light in the front room? A. No. It was a small one.

Q. Does he have more than one light in the front room? [571]

A. Yes. He has one very large light, I judge a hundred candle-power.

Q. And one small one? A. And one small one.

Q. And the small one, I believe you say was burning? A. Yes.

Q. Was there a light in the back room burning?

A. Yes, sir.

Q. Where was Mr. Rose?

A. Mr. Rose was lying on his bed when I went in the back room.

Q. Did you go right to the place, right into the back room without stopping when you entered?

A. No.

Q. What did you do?

A. When I went into the front door I stopped long enough to turn that light off.

Q. Before saying anything at all? A. No, sir.

Q. Or did you say something? A. No, sir.

Q. Tell us what you did when you went into the front room.

A. I went into the front room and I said, "Mr. Rose, it seems to me you are very extravagant with your electricity."

(Testimony of W. H. Wooldridge.)

Q. You just assumed he was in the back room?

A. Yes. I saw the light there.

Q. You couldn't see him though?

A. I couldn't see him from where I was. And he says, "Yes. I was too lazy to get up and turn it off. Turn it off will you" and I turned it off and went back where he was. [572]

Q. What did you do after you got back to where he was?

A. Well, I stood there and I talked with him a few minutes. The first thing I think I said was "How is business to-day?" and he said, "About as usual."

Q. Were you standing or sitting at that time?

A. I think I was standing up at that time.

Q. What was the next thing said that you remember?

A. I think we talked about picture shows.

Q. Do you know what you said about the picture show?

A. I don't remember whether I asked him if he was going to the show or not. I think I had that in mind when I asked him in regard to the time.

Q. Whether or not he was going to the picture show?

A. Because if he was going I would only have a few minutes to visit with him.

Q. Because by the right time, as you understood it, it was a few minutes to eight at that time. Is that the idea? A. Yes, sir.

Q. Well, do you remember what he said about picture shows?

(Testimony of W. H. Wooldridge.)

A. No, I don't. I don't remember.

Q. Did you say whether or not he was going?

A. No.

Q. Do you know whether you asked him?

A. I don't remember whether he told me or not.

Q. Do you remember whether you asked him or not, whether he was going to the show, or not, that night?

A. No, I don't think I did.

Q. What was the next thing talked about?

A. Then he asked me something about "What is the news?" [573]

Q. Yes?

A. Then I told him the circumstances of my going down to the Herrington house to see about those potatoes and that I found that girl alone there and what she had said to me about where her father was when I went in, and the two men coming in and the answer she had made them when they asked her where her father was.

Q. You told him all about that, did you?

A. I told him that, yes, sir.

Q. Did you say anything else about Laura Herrington at that time?

A. Yes. He talked about the question of those girls, the way he put it "Those girls are running around to men's cabins, and somebody is going to get into trouble over them."

Q. He volunteered all that himself?

A. Yes. And then he went right on and told about that those girls would be taken to the district attorney's and then from there to one of the assist-

(Testimony of W. H. Wooldridge.)

ants or to the grand jury room and they would be sweated out.

Q. That was all brought up by him, was it?

A. Yes.

Q. Following your talk about the potatoes, of course? A. He followed that.

Q. At that stage of the proceedings in his shop had Laura Herrington come in yet or not?

A. No, sir.

Q. What else was said then before she came in, that you remember? [574]

A. I don't remember of anything being said.

Q. Do you remember of anything else at all being said before she came in?

A. It has been stated here that there was keys talked about, but I don't remember.

Q. Never mind what has been stated. Do you remember anything about keys yourself? A. No.

Q. Absolutely nothing?

A. No. I don't remember about the key being spoken of. It may have.

Q. You don't remember a word about a key?

A. It may have been, I am not saying it was not.

Q. Do you remember a word about keys at all?

A. No. I don't remember.

Q. Do you remember a word at all about picture shows besides what you have heard testified to here? Do you remember it yourself? A. No.

Q. Do you remember anything about picture shows? A. No.

Mr. MARQUAM.—Besides what he has testified

(Testimony of W. H. Wooldridge.)

to, or besides what others have testified to?

Mr. HEILIG.—Q. I mean, aside from what has been testified to by others which you have heard, do you have any independent recollection of your own about that talk about picture shows? A. No.

Q. You just testified to that, about the picture shows, because you heard others testify to it?

A. No. I say we did talk about picture shows.
[575]

Q. Perhaps you misunderstood me. You do remember, of your own recollection, the talk about picture shows?

A. Yes. We said something about picture shows.

Q. Do you remember now of your own recollection any talk about keys at all? A. No.

Q. You don't?

A. No. We didn't talk about keys that I remember.

Q. What else do you remember that you talked about, about other subjects, if any?

A. We didn't talk about anything more.

Q. As you remember it all that was said was about the light first, then some talk about picture shows, then some talk about your visit at the Herrington's—the potato deal, and what came from him in that connection about the Herrington girl.

A. Yes.

Q. Is that all you remember, all the different subjects?

A. Yes, besides the question I asked him, "How

(Testimony of W. H. Wooldridge.)

is business to-day?"

Q. How long was it after this talk about the Herrington girl that Laura came in?

A. She came in almost immediately after that.

Q. What time of day did you say it was that she came in?

A. Around about eight o'clock I should judge.

Q. Just about eight o'clock. Did you know she was coming there? A. I did not, no, sir.

Q. You had no idea? Did you know whether or not Rose knew?

A. If he did he had not said anything to me about it.

Q. You don't know whether he knew she was coming or not? A. No. [576]

Q. Now, how long after Laura Herrington came into the back room where you and Rose were was it until you went out into the front room?

A. I got up and went right out.

Q. Did you say "hello" to her?

A. No. I didn't speak to her at all.

Q. Did Rose speak to her?

A. She said "hello" as she came in and Mr. Rose answered her.

Q. You got up immediately. You were sitting down, were you then? A. Yes, sir.

Q. You got up immediately and went into the front room?

A. Got up and buttoned up my coat. I stood there when I was buttoning up my coat and I went on out into the front room.

Q. What particular reason did you have for going

(Testimony of W. H. Wooldridge.)

out into the front room, any?

A. Because when she passed around my chair, going around and back to the point where Rose was, she said "Somebody is following me. I want to hide" and I got up and went out into the front room.

Q. That was the only reason you went out, or what was the reason?

A. The reason I went out, I was going right out front to see if I could see who was following her.

Q. It was upon hearing those words from her that somebody was following her which put into your mind the idea of going out and seeing. Is that the idea? A. Yes.

Q. It was not the mere fact that she came in and you wanted to [577] get out?

A. No. I didn't think anything of that.

Q. That didn't bother you at all?

A. No, sir, but when she made that remark that somebody was following her, then I got up and started and walked out into the front room.

Q. What did you do? Why did you step out there into the front room?

A. I stopped to—I felt around and turned the light on. Well, I could see dimly where the light was and I got hold of that and turned it on.

Q. You could see from the light in the back room about where this light was?

A. About where it was.

Q. You are sure now that you turned it on?

A. Yes. I turned it on.

Q. Which one did you turn on at that time?

(Testimony of W. H. Wooldridge.)

A. The small one.

Q. Was the big light turned on at all that evening that you know of?

A. I think it was on when I came back from the corner of Second street.

Q. That would be just a few minutes after you had gone out that you came back? Is that the idea?

A. Yes, sir.

Q. You didn't turn it on yourself? A. No, sir.

Q. Well, now, are you sure whether it was on or not when you came back? [578]

A. No, I wouldn't be positive, but I think it was. I think it was the larger one that was on.

Q. And the only reason that you went out there was to see, if you could, if anybody was following Laura, and probably who it was, if there was anyone?

A. Yes, sir. That is the reason I started out of the building just then.

Mr. HEILIG.—I believe the Court ruled that before speaking any more about this statement, that I should show it to Mr. Wooldridge.

The COURT.—Yes.

Mr. HEILIG.—Q. (Handing a paper to witness.) I want you to read your statement here. Read it all, if you care to. (Witness takes paper and spends a considerable time reading or examining it.)

A. This first paragraph where it is stated that I said that the investigation and indictment by the grand jury was the result of having, as a notary public, affixed my notarial seal to two affidavits one

(Testimony of W. H. Wooldridge.)

against District Attorney Roth and the other against United States Marshal L. T. Erwin, is practically correct.

Q. Yes? Just continue until you find something that is not correct, Mr. Wooldridge, and **as you come** to anything that appeals to you as not being correct, just state it?

A. Now, I do not know when these statements were made, the paragraph here starting: Beyond denying his guilt of any crime, Mr. Wooldridge did not mention anything concerning the first count in the indictment. He stated, however, that, though not knowing the counts would be brought, the second [579] count was a deliberate trap laid to catch him in connection with the Herrington girl." I did say that I believed that that was a deliberate trap.

Q. Yes?

A. The next paragraph: "I had a potato deal pending, and I called there in the evening." That was correct, with the exception of being incomplete.

Q. That you had been there in the morning, was the only difference.

A. Yes, sir. Another paragraph that I notices is: "I immediately decided to go home and so told the little Herrington girl good night. All the way home I pondered on that." I didn't make any such statement on that.

Q. You notice I have that underlined there.

A. Yes.

Q. You didn't make any such statement. Are you willing to say, then, that Mr. Caskey was wrong in

(Testimony of W. H. Wooldridge.)

so quoting that in quotation marks as part of your statement; that part you have just referred to?

A. That is not in quotation marks.

Q. I beg pardon. Most of it is. That is my mistake, I presume.

A. It says here: "I finally decided that I would return to the Herrington home." That was all right, with the exception of what was said prior to that; that I had gone home and then returned. That I had gone up the street a ways, it should be.

Q. That is the only correction you would make there; that instead of going home, you went up the street a little ways and then returned?

A. Yes. Here is another statement that I am not sure that I [580] said to Mr. Caskey: "Both Mr. Rose and I asked her for her seeming agitation." That was not asked.

Q. You don't remember anything of that kind being stated to Mr. Caskey? A. No.

Q. You understand what we are trying to do now. What I am trying to do is to find out whether or not that is written as you stated it to Mr. Caskey; not as to what the fact might be.

A. A portion of this is—(interrupted).

Q. And I want you to pick out what you consider inaccuracies in the publication. That is what you did not state to Mr. Caskey.

A. Well, I see that he has here that, in using the language it says: "We told her to go into the back room." It wasn't necessary. She was already in the back room. That is not right.

(Testimony of W. H. Wooldridge.)

Q. You didn't tell that to Mr. Caskey that way.

A. No. I wouldn't have told him that because that would have been uncalled for and not true. Here is another: "Shortly after that I heard a scratching in the hallway next to the shop and decided to go out and investigate." I don't know where he got that.

Q. Will you swear, Mr. Wooldridge, that you did not tell Mr. Caskey that you heard a scratching in the hall?

A. No, I didn't tell him anything of that kind.

Q. You are willing to swear that you did not?

A. I didn't tell him anything of that kind.

Q. Do you know where Mr. Caskey got that information? [581]

A. No. I do not. It was not from me.

Q. All right.

A. Leaving this paragraph out, where I say that I started toward Second Street or the Wilson corner, that I met Deputy Marshal Miller; that I reached the men I saw there and that they were Deputy Marshal Miller—deputy marshals, and one of them was Chief Deputy Marshal Miller. I don't remember of ever making that statement to him, because I don't think Mr. Miller was right there then. There was two of them, and Mr. McMullen was one and I think Mr. Frank Hall the other, and I don't know who the third man was.

Q. You understand I am not trying to make this statement correspond necessarily with the facts of the case as you are now testifying to them—(inter-

(Testimony of W. H. Wooldridge.)

rupted). A. Yes, sir.

Q. I am just concerned with whether or not you stated those facts to Mr. Caskey and he published them as you stated them.

A. No. They are not published as I stated them.

Q. That is, as you pointed them out in the various places.

A. Here is another, that I don't remember of saying to Mr. Caskey, because I had no reason for saying it: "I am innocent of any crime whatever. I feel that charges are going to be preferred against me by the grand jury." I didn't say that at all. I might have said that, "I am innocent of any crime." I don't deny but what I may have said that, although I do not remember of it. And the charges or the investigation was being made by Mr. Miller, and that I didn't think that it would ever reach the grand jury. Here is another statement that I made I think: "I have affixed my [582] notarial seal to two affidavits, one against District Attorney Roth and the other against Marshal Erwin. Of course they will try to send me over the road for them." I may have said that.

Mr. HEILIG.—Read it all.

The COURT.—Q. As I understand, that portion of the statement you are not sure about.

A. No, I may have said that. I think Mr. Erwin has had that feeling for me for sometime, that he would do that if he could.

(Plaintiff moves that the answer be stricken as not responsive to any question. Motion granted.)

(Testimony of W. H. Wooldridge.)

Mr. HEILIG.—Q. Then would you say that this article which you have just read and which purports to be an interview given by you to the Citizen,—Alaska Citizen—was accurate or not? Does it contain statements which you made to Mr. Caskey, or is it not an accurate statement?

A. It contains some statements that I made to him, and some that I did not make.

Q. But only the instances which you mentioned upon just reading that article,—the statements therein made were not statements as you had stated them to Mr. Caskey.

A. The statements that I referred to as not being true are statements that I did not make.

Q. To Mr. Caskey? A. To Mr. Caskey.

Q. But I understood you to say that you did not at any time speak to Mr. Caskey since and tell him that he had misquoted you.

A. No, sir, because I didn't see that paper until I was in jail. [583] I have not had any opportunity to speak to him.

Q. You testified you had made no attempt to have it corrected in any way.

A. I spoke to Mr. Dodge about it.

Q. About having it corrected?

A. No. I told him that the story was not correct.

Q. That is all you did about it?

A. I asked him if he would see Mr. Caskey about it. That is all I said. I left it to him to do as he thought best.

Q. And you had the paper, I believe you said,

(Testimony of W. H. Wooldridge.)

and had read it at least a couple of times—this article? A. Yes.

Q. In the jail? A. Yes.

(Here the Court takes a recess until 2 P. M. to-day, and the jury, after being admonished as usual by the Court, leave the courtroom in charge of the bailiffs. After said recess, and at 2 P. M., the defendant and his attorneys, and the district attorney, and the jury are in court, and trial proceeds.)

Witness W. H. WOOLDRIDGE resumes his testimony on cross-examination. [584]

Q. Mr. Wooldridge, after you left the shop of Mr. Rose, that is just after Laura Herrington had come in and told you that somebody had been chasing her and she wanted to hide, or something to that effect, you left the shop. Just when did you meet Marshal Miller with reference to that time?

A. I don't remember just at the point that I met him. There were three around there, if I remember, Mr.—I took it to be Mr. Frank Hall and Mr. McMullen and one other man whom I did not recognize, and I do not remember just at what point we met Mr. Miller.

Q. Who did you first talk to, which one of those men? A. Mr. McMullen.

Q. And was it Mr. McMullen who asked you to go to the marshal's office?

A. Yes, sir. Well, to go back to Mr. Rose's. He asked me to go back to Mr. Rose's when I first met him at the corner.

Q. But afterwards who asked you first to go to the

(Testimony of W. H. Wooldridge.)

marshal's office, do you remember?

A. I think that was Mr. Miller.

Q. You think Mr. Miller was in Rose's?

A. It seems to me as though he was. But I wouldn't be positive now which one asked that question.

Q. At any rate when you got back to the marshal's office, was Mr. Miller with you then—not "back," but when you went to the marshal's office?

A. If he was not there right with us, he was there immediately after that. I think he was with us when we got to the marshal's office.

Q. Who took you into the marshal's office? Who was with you [585] when you went in there?

A. Mr. McMullen and Laura Herrington and there was some others, but I don't remember. I don't remember whether Mr. Rose had got up with us then or not, but I think he was there.

Q. Referring to the private office of the marshal or the back room. Do you know the room that I refer to? A. Yes.

Q. Did you go into that room?

A. We went directly into that room.

Q. Will you name all the persons that were in that room the first time you went into it that night.

A. There was myself and the girl Laura Herrington and Mr. Rose and I believe it was Mr. Miller who walked in there with us.

Q. At first? A. Yes, sir.

Q. Those four. Did you see Mr. Roth at that time? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Did you see Mr. Roth and talk with him in that back office? A. No, sir.

Q. Did he go into that office at all that night?

A. He came in at the front door.

Q. That would be into the front part of the marshal's office, in front of the counter.

A. Yes, sir.

Q. Did he talk to you at all? A. No, sir.

Q. Well, now, when you and Laura Herrington and Rose and Miller were in this back room of the office did Mr. Miller, during the conversation which ensued there, ask you if you had been [586] or why you had been, at the Herrington house the night before, or words to that effect? A. Yes, sir.

Q. Did you at that time tell him that you had not been there? A. No, sir.

Q. Did you deny that you went there the night before?

A. He asked me what I was doing there when he and Mr. Berg went in, and I told him I went there to see potatoes, to see about some potatoes. He asked me why I went back there. He asked me if I had been there since, and I told him "No."

Q. That is an explanation, but it is not an answer to the question. Did you at any time in that office that evening deny to Mr. Miller that you had been at the Herrington residence the evening before?

A. At all?

Q. Yes. A. No, sir.

Q. Did you that evening deny that you had gone

(Testimony of W. H. Wooldridge.)

back to the Herrington residence a second time that evening?

A. I didn't understand his question then. He asked me if I had gone back again and I told him no, but I thought he meant the day of the evening that we were assembled in marshal's office, but when he called my attention and asked me if I hadn't gone right back that same evening, I told him I had.

Q. When he asked you if you had gone back and you said "No," you say now you didn't understand him; but at any rate, you said "No." Did he not ask you then, in substance, if that answer which you had just made then was as true as [587] anything else which you had told him at that time. Did he use words to you to that effect?

A. I don't remember it if he did.

Q. You would not deny that he did?

A. No, no. I wouldn't deny it, but I don't remember it.

Q. You say positively you do not remember such conversation?

A. He may have said it, but I don't remember it.

Q. Anyway, if he asked you if you went back and you said "No," it was through a misunderstanding?

A. Yes, sir, because when I understood his question, I answered him.

Q. Now, on the fourteenth day of February, did you either give or sell to Mrs. Herrington any whiskey? A. I did not.

Q. You say you did not, either on the fourteenth or the fifteenth? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Have you, at any time, Mr. Wooldridge, taken any whiskey to Mrs. Herrington? A. No, sir.

Q. Has she at any time given you money to go and buy whiskey for her? A. No, sir.

Q. Have you at any time in the past procured anybody else to buy whiskey for you to take to Mrs. Herrington? A. No, sir.

Q. At no time? A. No, sir.

Q. And you state positively that she has never at any time [588] asked you to go and get whiskey for her? A. No, sir, I didn't say that.

Q. I asked that as a question.

A. She has asked it, yes.

Q. Has she given you money at any time to go and get whiskey for her? A. No, sir.

Q. And you deny positively that you at any time ever brought whiskey to her?

A. I have not taken her any whiskey.

Q. Now, this first time that you and Mr. Miller and Mr. Rose and Laura went into the back room of the marshal's office, state as you remember it just what was said upon entering the office.

A. When we first entered the office, Mr. Miller asked one of the deputies, I think it was Mr. Berg, to step to the door there and see that we three didn't hold any conversation, or didn't talk, and he would see if he could find Mr. Roth. We remained there a few minutes and Mr. Roth came in at the front door. I was sitting where I could see the front door and I saw him come in. He and Mr. Miller stood at the front door and talked for a minute or two, and

(Testimony of W. H. Wooldridge.)

Mr. Roth went away. Mr. Miller came back into that private office and said "You fellows come in here. I want a witness to what will be said to the questions I am going to ask," something to that effect, and I think it was Mr. Berg, and one other—I don't know really which one it was—that came in there.

Q. Was there no conversation then between you and Mr. Miller [589] in that private office before he called in these two men whoever they were?

A. I think that he asked the girl the question why she was up at Rose's.

Q. Yes?

A. And he told her that she had gone up there to meet me.

Q. You say he told her, or she told him?

A. She told him, she says, "I went up there to meet him," and pointed toward me.

Q. Didn't Mr. Miller at that time, and before these two deputies you speak of came in, ask you why you were meeting Laura Herrington up at Rose's?

A. Well, I have just forgotten whether it was him or someone else asked what these meetings meant.

Q. I mean before anybody was in this office, with the exception of you four—you, Miller, Rose and Laura Herrington.

A. I am telling you that I don't remember whether it was Mr. Miller or not that asked that question, but it may have been Mr. Miller before the deputies were there. He wanted to know what those meet-

(Testimony of W. H. Wooldridge.)

ings meant up there, and I told him I would like to know, too.

Q. Did you at that time and at that place, Mr. Wooldridge, tell Mr. Miller that Laura came running in there in rather a nervous condition, and stated to you and Mr. Rose, or to whoever was in there, that she wanted to hide; that somebody was following her?

A. I don't remember that I said she was nervous or excited. I may have said that. She was a little nervous when she came in there. [590]

Q. Did you tell Miller that at that time?

A. I don't remember whether I did or not.

Q. Is it not true that you stated that to Mr. Miller, or that in substance to Mr. Miller, and that Laura Herrington then spoke up and said that you were lying, that that wasn't so?

A. No, not at that time.

Q. That was at a point afterwards when the other deputies had come in, was it?

A. Well, I don't know whether they were present or not, but it was not at that point in the conversation that she made that remark.

Q. Now I am trying to find out what conversation was entered into between you four people in that office before the other deputies came in there. Can you state whether that conversation was held before the other deputies came in there or after?

A. I think it was after.

Q. Can you remember anything else that was said, before those two deputies came in, between you and Mr. Miller, or between Laura and Mr. Miller?

(Testimony of W. H. Wooldridge.)

A. No, I don't know that I do.

Q. Very well then. Then he called in two deputies you state? A. Yes, sir.

Q. What conversation ensued then as you remember it?

A. He said he wanted them to hear the questions and answers that were made there, or the conversation.

Q. Yes?

A. And then he asked that girl, he asked Laura, why she was up [591] at Rose's and she said she went up there to meet him, pointing to me, and he asked her if she had made arrangements, and she said, "Yes." He wanted to know what she was going there for and she told him that I had told her that I wanted to do something with her, and he said what was that, or he asked her a question to lead out that, and she said "He wanted to have a piece of me," and then I told Mr. Miller that there was nothing to that; that I deny it.

Q. Did you state to him at that time, or about that time, that she had come in there? A. Yes, sir.

Q. And told you that she wanted to hide?

A. Yes, sir. And that was the time when I made that statement to Mr. Miller that she passed around my chair and said she wanted to hide; that somebody was following her, and she said, "It is a lie."

Q. Now to go back for a minute to the time that you left the Herrington house and walked upstream, as you said, a little ways— A. Yes.

Q. —and then went back, just before you went

(Testimony of W. H. Wooldridge.)

into the house, or rather went to the door of the house this second time in the evening did you look to see whether these two men who had been there before were gone? A. No, sir.

Q. Did you look to see if you could see them?

A. No, sir.

Q. You didn't even look down the street where you had seen them [592] a few minutes before?

A. It wouldn't be necessary. I was going right in that direction. No, sir.

Q. Did you see anybody there? A. No, sir.

Q. And you can't give us any estimate as to what time it was from the time you left the house that evening until you went back.

A. No. I don't know how long it was exactly.

Q. You hadn't paid any attention to it?

A. No, I don't know, because I was pondering in my mind why she would make those answers.

Q. And you were standing right out in the street on Second Avenue within a hundred yards of the house all this time? A. No. I didn't say that.

Q. I believe you did. What did you say?

A. I said I didn't think I had gone more than three hundred feet, but I didn't say I was standing there all this time.

Q. Well, possibly.

A. I don't know how long you have reference to.

Q. All the time that you were away from the house you were either standing or walking in the middle of Second Avenue were you not?

A. Well, I was in that neighborhood, yes.

(Testimony of W. H. Wooldridge.)

Q. And all that time you were within one hundred yards, or three hundred feet, as you have testified, of the Herrington house?

A. Well, I don't think I was further than that. I didn't measure it, Mr. Heilig, but I don't think, though, I was further than that. [593]

Q. Did you see anybody going into or towards the Herrington house during that time? A. No, sir.

Q. Could you see the front of the Herrington house from where you were at all times, if you had been looking?

A. I may have. I don't remember whether I could have or not.

Q. I believe that you stated that you interviewed or talked with Mr. Caskey about this, Mr. Wooldridge? A. Yes.

Q. About the part that was put in the paper?

A. Yes.

Q. Was there anybody else present listening to that conversation?

A. Not that I know of. I don't think anyone heard it.

Q. You didn't see anyone there? A. No.

Q. Do you remember when you said it was?

A. Well, I think it was Wednesday or Thursday following the Tuesday that this took place at Mr. Rose's shop.

Q. Was this out in the printing shop, or in the other room, over at Caskey's?

A. It was the second room. No, it was not the printing shop. It was the one behind.

(Testimony of W. H. Wooldridge.)

Q. It was not in the room where the machinery is?

A. No.

Q. That is at the Alaska Citizen office?

A. Yes, sir.

Q. Over on Garden Island? A. Yes, sir.

Mr. HEILIG.—That is all. [594]

Redirect Examination.

(By Mr. MARQUAM.)

Q. In the first paragraph of this story that was submitted to you and you read you said that it was substantially correct. That is the one about your reference to having—the result of your having affixed your notarial seal to two affidavits.

(Plaintiff objects, as irrelevant, incompetent and immaterial and not redirect examination. All the witness was asked to do was to put out the errors in that statement. Objection overruled.)

Q. In that paragraph, this language is used: “He stated that he was innocent of any crime, and that his investigation and indictment by the grand jury was a result of his having done these things.” Did you make any statement to that effect?

A. That couldn’t be true, because I wasn’t indicted at that time, or I didn’t know the grand jury was investigating.

Mr. MARQUAM.—That is at the head of the story and is not within any part of the article which is enclosed in quotation marks. That is admitted?

Mr. HEILIG.—That shows for itself. Yes.

Mr. MARQUAM.—Q. You don’t know who wrote this story, do you? A. No, sir.

(Testimony of W. H. Wooldridge.)

Q. Did Mr. Caskey write it, do you know?

A. I do not know who wrote it.

Q. Mr. Wooldridge, after you had left the Herrington house at that time, the last time that you went there and came away, where did you go? [595]

A. On Monday evening?

Q. The first time you were there. The first time you went down there.

A. I got to thinking about that afterwards, and I think I might have been mistaken about that.

Q. Just state, if you think you are mistaken.

A. When I left the Herrington house the second time to start home, I think I stopped at the City Hall. I expected to meet my daughter there, because the children of the school were going to the meeting to listen to the council meeting that night. I think I went from the Herrington house there.

Q. You were up at the council chambers at the time the children were there to listen to the proceedings? A. Yes, sir.

Q. That is the school children? A. Yes, sir.

Q. And you think this is the night that you were going home and you stopped in there?

A. I think that was the same night.

Q. After making that stop you went away.

A. Yes. I went from the council meeting, home.

Mr. MARQUAM.—That is all.

Mr. HEILIG.—That is all.

Mr. MARQUAM.—That is our case.

Defendant rests. [596]

**Testimony of Mrs. Exena Herrington, for Plaintiff
(in Rebuttal).**

Mrs. EXENA HERRINGTON, a witness for plaintiff in rebuttal, heretofore sworn, testified as follows:

Direct Examination.

(By Mr. ROTH.)

Q. Mrs. Herrington, did Mr. Wooldridge ever bring you any whiskey before this time that he brought this whiskey on the day that he came down there to see about the potatoes?

(Defendant objects as an attempt to impeach the defendant upon an immaterial matter, on an issue outside of the case and if the defendant had the particular time so as to trace the matter up, the defendant would not object. It is absolutely incompetent, irrelevant and immaterial, and an attempt to impeach the defendant upon an immaterial matter. Objection overruled. Defendant excepts. Exception allowed.)

A. Not the same day. Yes, the same day.

Q. How many times did he bring you whiskey that day? A. This once.

Q. Just once. Did he ever at any time before, years ago, bring you whiskey?

(Defendant makes the same objections, which are overruled, and an exception asked and allowed.)

A. A long time ago.

Q. How many times did he bring you whiskey a long time ago?

(Defendant makes the same objections, which are

(Testimony of Mrs. Exena Herrington.)
overruled and an exception allowed.)

A. I can't say how many times.

Q. Many times?

(Defendant objects as incompetent, irrelevant and immaterial. Objection overruled. Exception allowed.)

A. Oh, many times.

Mr. ROTH.—That is all.

Mr. MARQUAM.—No questions.

Mr. ROTH.—The Government rests. [597]

TESTIMONY CLOSED.

(The Court takes a ten minute recess, and the jury, after being admonished as usual by the Court, withdraw from the courtroom in charge of the bailiffs; and, after the recess, the defendant and his attorneys and the district attorney and the jury are present; and the Court orders the jury to withdraw from the courtroom, and, after being admonished as usual, they withdraw in charge of the bailiffs.)

Motion of Defendant to Strike Testimony of J. H. Miller, etc.

Mr. MARQUAM.—The defendant moves that all of the testimony of the witness J. H. Miller, with reference to what Laura Herrington told him during the month of February, 1916, as to Wooldridge having sexual intercourse with her, and all that testimony relating thereto, be stricken upon the same grounds and for the same reasons that were assigned in defendant's motion, at the time the testimony was given, to wit: That it was hearsay, said

statements of said Laura Herrington to the witness Miller having been made some fourteen months after the alleged offense occurred.

That is the first motion.

**Motion of Defendant to Instruct Jury to Return
Verdict of not Guilty on First Count of
Indictment.**

The defendant further moves at this time that the Court instruct the jury to return a verdict of not guilty upon the first count, for the reason that neither the first count of the indictment herein states facts sufficient to constitute a crime; for the further reason that the evidence produced in this case fails to establish such allegations of the indictment as would be sufficient to corroborate a crime or of the proof of a crime; that the evidence introduced in this case is insufficient to justify a verdict of guilty upon the first count of said indictment, and that if the jury should return a verdict of guilty upon said first count it would be the duty of the Court to set said verdict aside and grant a motion for a new trial. [598]

**Motion of Defendant to Instruct Jury to Return
Verdict of not Guilty on Second Count of
Indictment, etc.**

Defendant further moves the Court to instruct the jury to return a verdict of not guilty upon the second count in said indictment for the reason that the allegations contained in said second count in said indictment are not sufficient to constitute a crime in that there are no facts alleged of any attempt, no

facts alleged as to the commission of any acts, or the attempted commission of any acts, towards the consummation of the crime of rape; for the further reason that the evidence introduced in this case is insufficient to support a verdict of guilty, and the testimony in this case shows, upon the part of the prosecution—assuming the same to be true—tends to prove only acts of preparation, and does not even tend to prove any acts or an attempt to commit any acts towards the consummation of the offense alleged, and that if the jury should return a verdict of guilty upon said second count it would be the duty of the Court to set said verdict aside and grant a new trial.

With regard further to the motion directed to the second count, defendant assigns the further reason for sustaining said motion that said second count in said indictment does not attempt to state the commission of any crime.

Mr. ROTH.—We resist the motions.

The COURT.—The first motion will be denied and an exception allowed. The second motion will be denied and an exception allowed. And the third motion will be denied and an exception allowed.
[599]

The opening argument to the jury was made by Reid W. Heilig, Esq., on behalf of the Government, followed by B. A. Dodge, Esq., and Thomas A. Marquam, Esq., who respectively presented arguments to the jury on behalf of defendant, and the closing argument to the jury was made by R. F. Roth, Esq., on behalf of the Government.

Thereupon the Court read its written instructions to the jury as follows: [600]

[Title.]

Instructions to the Jury.

GENTLEMEN OF THE JURY:

I.

The defendant, W. H. Wooldridge, has been accused by the grand jury and is charged in Count I of the indictment in this case with the crime of rape, and is charged in Count II of said indictment with the crime of attempt to commit rape; and he is now on trial before you for said crimes as charged.

Count I of the indictment charges that the said W. H. Wooldridge, on the twenty-third day of December, 1914, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this Court, did then and there wilfully, unlawfully and feloniously carnally know and abuse one Laura Herrington, a female child then under the age of sixteen years, to wit of the age of thirteen years, he, the said W. H. Wooldridge then and there being a male person over the age of twenty-one years.

And Count II in the indictment charges that the said W. H. Wooldridge, then and there being a male person over the age of twenty-one years, on the fourteenth day of February, 1916, at Fairbanks, Fairbanks Precinct, Fourth Judicial Division, Territory of Alaska, and within the jurisdiction of this Court, did then and there, wilfully, unlawfully and feloniously attempt to unlawfully and feloniously carnally

know and abuse one Laura Herrington, she being then and there a female person under the age of sixteen years, to wit of the age of fourteen years, by then and there procuring said Laura Herrington to consent to meet him, the said W. H. Wooldridge at that certain place in Fairbanks known as J. P. Rose's repair-shop, [601] situate on Lacey Street, between First and Second Avenues, for the purpose of having unlawful and felonious sexual intercourse with him, the said W. H. Wooldridge, and by meeting the said Laura Herrington at said shop on said day, pursuant to said arrangement, with the unlawful and felonious intent to then and there carry out said arrangement and to carnally know and abuse said Laura Herrington, but the said W. H. Wooldridge was prevented and intercepted in the perpetration of said crime.

That the acts done by him, the said W. H. Wooldridge, tended to but failed to effect the commission of the crime of rape, and that by reason thereof the said W. H. Wooldridge did wilfully, unlawfully and feloniously commit the crime of attempt to commit rape.

II.

You are instructed that in this case the jury and the Judge of this court have separate functions to perform.

It is your duty to hear all the evidence, all of which is addressed to you, and to decide thereupon all questions of fact.

It is the duty of the Judge of this court to instruct you upon the law applicable to the facts and

evidence in this case, and the law makes it your duty to accept as law what is laid down as such by the Court in these instructions.

And you are instructed that these instructions are to be taken and considered by you together as a whole.

III.

You are instructed that the indictment is a mere accusation and is not, in itself, any evidence of the defendant's guilt.

IV.

The defendant is presumed to be innocent of the crimes charged against him by the indictment until he is proven guilty beyond a reasonable doubt, by the evidence produced in this case and submitted to you, and this presumption of innocence is a right guaranteed to the defendant by the law and remains with him and should be given full force and effect by you until such time in [602] the progress of the case as you are satisfied of his guilt from the evidence beyond a reasonable doubt. The presumption of innocence is not a mere form to be disregarded at pleasure, but it is an essential and substantial part of the law of the land and binding on the jury in this case, as in all criminal cases.

V.

You are instructed that the term "reasonable doubt," as defined by the law and used in these instructions, is that state of the case which, after a careful comparison and consideration of all the evidence in the case leaves the minds of the jury in that condition that they cannot feel an abiding conviction, to a moral certainty, of the truth of the charge.

The term “reasonable doubt” does not mean any doubt; but such doubt must be actual and substantial, as contradistinguished from mere vague apprehension, and must arise out of the evidence, or from a want of evidence, or from both such sources.

A reasonable doubt is not a mere whim, but is such a doubt as arises from a careful and honest consideration of all the evidence or lack of evidence, in the case; and the evidence is sufficient to remove all reasonable doubt when it convinces the judgment of ordinarily prudent men of the truth of a proposition with such force that they would act upon the conviction without hesitation in their own most important affairs of life.

Proof beyond a reasonable doubt does not mean proof beyond all doubt.

VI.

The defendant has interposed a plea of not guilty of the crimes charged in the indictment, and such plea denies each and every essential element of each of said crimes, and places the burden upon the Government of proving each such element of each of said crimes, beyond a reasonable doubt, before you can find the defendant guilty of any one count or counts. [603]

VII.

You should not consider any evidence sought to be introduced but excluded by the Court, nor should you consider any evidence that has been stricken by the Court from the record nor should you take into account, in making up your verdict, any knowledge

or information known to you not derived from the evidence given upon the witness-stand.

VIII.

The jury are instructed that they are the sole judges of all questions of fact in this case, and they should determine the same from the evidence in the case. But your power in this connection is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence laid down in these instructions.

IX.

In considering the evidence in this case, you are not bound to find a verdict in conformity with the declarations or testimony of any number of witnesses, when their evidence does not produce conviction in your minds, against a lesser number of witnesses, or other evidence, which is satisfying to your minds.

X.

In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying; if any is shown; his relation to or feeling for or against any of the parties to the case; the probability or improbability of such witness' statements; the opportunity he had to observe and to be informed as to matters respecting which he gave testimony before you; and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within the knowl-

edge of such witness. It is your duty to give to the testimony of each and all of the witnesses appearing before you such credit as you consider the same justly entitled to receive. [604]

And in this connection you are instructed that evidence is to be estimated not only by its intrinsic weight, but also according to the evidence which it is within the power of the one side to produce, and of the other to contradict; and, therefore, if the weaker and less satisfactory evidence is offered, when it appears that the stronger and more satisfactory evidence is within the power of the party offering the same, the evidence so offered should be viewed with distrust.

XI.

You are instructed that if you find any witness has wilfully testified falsely in one part of his testimony in this case, you may distrust any part, or all, of the testimony of such witness. And, if you believe from the evidence that any witness appearing before you in this case has wilfully testified falsely, you are at liberty to reject the entire testimony of such witness; but you are not bound to reject the entire testimony of a witness because he has testified falsely in some part of his testimony; you should reject the false part, and should give to the other parts such weight as you may deem they are justly entitled to receive.

You should not fail to weigh and consider fairly and give proper effect to all testimony which you consider truthful.

XII.

You are instructed that certain testimony has been admitted in this case for specified and limited purposes, which at the time of its reception by the Court was so limited.

You will bear in mind and confine yourself, in the consideration of such testimony, to the limited purpose for which it was so admitted. A particular application of this instruction is directed to the evidence of the witness J. H. Miller wherein he testified to statements made to him by Laura Herrington prior to the investigation testified to by him, said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception. [605]

XIII.

You are instructed that a witness may be impeached either by proof of contradictory statements, or statements materially different and at variance with what he may have testified to upon the witness stand. And if you believe that any witness in this case has been successfully impeached, you may disregard the testimony of such witness unless his testimony is corroborated by other credible evidence in the case.

And it is for you to say whether or not you will believe the witness sought to be impeached, or the witness brought to impeach him, as the law makes it incumbent upon the jury to determine the credibility of all the witnesses appearing and testifying before them in the trial of the case.

XIV.

You are further instructed that the question of punishment is reserved for the Court, and that the jury have nothing to do with that branch of the case, and are not to consider the same.

It is for you to determine solely whether or not the defendant is guilty of the respective crimes charged in the indictment. The matter of the form and severity of the punishment is to be left to the discretion of the Court.

XV.

You are instructed that corroborating evidence must be such as tends to connect the accused with an alleged offense, and, as distinguished from evidence of the act itself, is additional evidence of a different character to the same point. It means to strengthen, to add weight or credibility to a thing.

XVI.

There is some evidence in this case as to oral admissions and statements out of court of some of the parties to the case, who have appeared as witnesses before you and testified to the same.

I charge you that, owing to the infirmity of the human mind [606] and the inability of witnesses to repeat the exact language used by persons alleged to have made such admissions and statements, and to understand it correctly and repeat it with all its intended meaning, you are to view the evidence as to such oral admissions and statements with caution, but if you should find and believe that such oral admissions and statements were actually made by the person or persons alleged to have made them, you

should consider them as candidly and fairly as other evidence in the case and give them weight accordingly.

XVII.

You are instructed that there are two general classes of evidence, direct and circumstantial. Evidence as to the existence of the main fact in issue, is direct evidence, while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue.

You are instructed that circumstantial evidence is legal and competent evidence, and if it be of such a character as to exclude every other reasonable hypothesis than that of the defendant's guilt, then it is sufficient to warrant a conviction. In other words, such evidence is sufficient to warrant a conviction when it convinces the minds of the jury of the guilt of the accused beyond a reasonable doubt.

It is not necessary to prove the defendant's guilt by the testimony of eye-witnesses who have seen the offense committed, but such guilt may be established by facts and circumstances from which it may be reasonably and satisfactorily inferred, provided such facts and circumstances establish such guilt beyond all reasonable doubt.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. It is sometimes quite as conclusive in its convincing power as the direct and positive testimony of eye-witnesses; and, when it is so strong and satisfactory, the jury should so consider it, neither enlarging nor belittling its force. But in order to warrant a conviction on circumstantial [607] evidence, the circumstances

taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion and producing in effect a reasonable and moral certainty that the accused and no one else committed the offense charged. And it is an invariable rule of law that to warrant a conviction upon circumstantial evidence, such facts and circumstances *much* be shown as are consistent with the guilt of the person charged, and as cannot upon any reasonable theory be true and the person charged be innocent.

XVIII.

You are instructed that a person charged with the commission of a crime shall, at his own request, but not otherwise, be deemed a competent witness in his own behalf, the credit to be given to his testimony being left entirely to the jury, under the instructions of the Court. And you are instructed that in this case the credit to be given to the testimony of the defendant, W. H. Wooldridge, is left solely to you, and you should give it the same fair and candid consideration you do to the testimony of other witnesses in the case, but you have a right to take into consideration the interest of the defendant in the result of this trial, as affecting his credibility.

XIX.

You are instructed that whoever has carnal knowledge of a female person forcibly and against her will, or, being sixteen years of age, carnally knows and abuses a female person under sixteen years of age, with her consent, is guilty of rape.

XX.

You are instructed that, if you find from the evi-

dence in this case, beyond a reasonable doubt, that the defendant had sexual intercourse with the witness Laura Herrington, and that at the time of such sexual intercourse the said Laura Herrington was less than sixteen years of age and the defendant was more than sixteen years of age, you should find the defendant guilty as charged, on the first count of the indictment.
[608]

XXI.

You are instructed that the law presumes a female under the age of sixteen years to be incapable of giving consent to the act of sexual intercourse, and therefore, if you find from the evidence beyond a reasonable doubt, that the defendant W. H. Wooldrige, being then and there more than sixteen years of age, had sexual intercourse with the said Laura Herrington, she being at the time less than sixteen years of age, you should find the defendant guilty as charged in the first count of the indictment, even though the said Laura Herrington consented to the copulation.

XXII.

You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse, and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; and whether the girl in fact consented or resisted is immaterial in this case.

In the present case, neither the element of force nor the question of consent has any application.

The witness Laura Herrington could not consent, and the law resists for her.

XXIII.

The government would not be required to show the age of Laura Herrington by a family record or any instrument; such proof may be made by oral testimony of witnesses, and said Laura Herrington is a competent witness as to her age, and such testimony may be based upon information with respect thereto, if any she may have from her parents.

XXIV.

You are instructed that it is incumbent upon the prosecution to prove that the crimes charged in the indictment were committed within the Territory of Alaska; but it is not necessary that the offense or either of them be proved to have been committed on the particular day [609] alleged in the indictment; it is sufficient if the proof shows the commission of the offenses at any time within three years prior to the 18th day of February, 1916, the date of the finding of the indictment against the defendant.

XXV.

If you believe from the evidence in this case, beyond a reasonable doubt, that the defendant W. H. Wooldridge, in the town of Fairbanks, Alaska, did as charged in the first count of the indictment, have carnal knowledge of Laura Herrington and did penetrate the female organ of said Laura Herrington, with his male member or penis, and that said Laura Herrington was then and there a female under the age of sixteen years, and was not then and there the wife of the defendant W. H. Wooldridge, and said

W. H. Wooldridge was over the age of sixteen years, you will find the defendant guilty under the first count of the indictment.

XXVI.

Evidence has been admitted tending to show that the witness Laura Herrington informed Ed Hall, shortly after the commission of the crime charged in the first count of the indictment, that she had been ravished by the defendant. Such information, if any, would not be evidence corroborating the testimony of said witness tending to connect the defendant with the commission of the offense of rape, if such offense was committed. The evidence of such information was admitted as tending to confirm or corroborate the truth of her testimony. The law is, that a failure by one who claims the crime of rape to have been committed upon her to immediately inform, is looked upon as a suspicious circumstance that her story is a fabrication. Hence, the testimony of such information was admitted for the purpose of testing the accuracy and veracity of the witness Laura Herrington, and for no other purpose.

XXVII.

The jury is instructed that the witness Laura Herrington is in law a competent witness; but the credibility of her testimony [610] and how far she is to be believed, is to be determined by the jury, and is more or less credible according to the circumstances of facts that concur in that testimony.

XXVIII.

The intent to have sexual intercourse where the female is under the age of consent, is an essential

element in the crime, and must be proved beyond a reasonable doubt; and this may be done by proof of any facts or circumstances tending to show such intent.

XXIX.

You are instructed that in the case of rape it is not essential that the one upon whom the rape is alleged to have been committed should be corroborated by the testimony of other witnesses as to the particular act constituting the offense; and if the jury believe from the testimony of the witness Laura Herrington, and the corroborating circumstances and facts testified to by other witnesses, that the defendant did commit the crime as charged, the law would not require that the witness Laura Herrington should be corroborated by other witnesses as to what transpired at the immediate time and place when it is alleged the crime was committed.

XXX.

The charge of rape against a person is easy to make, difficult to prove and more difficult to disprove, and in considering a case of this kind, it is the duty of the jury to carefully and deliberately consider, compare and weigh all the testimony, facts and circumstances bearing on the acts complained of, and the utmost care, intelligence and freedom from bias should be exercised by the jury in the consideration thereof. The time and place of the alleged acts; relation of the defendant to the said Laura Herrington upon whom the rape is alleged to have been made in the first count of the indictment; her age and intelligence; and physical development; his influence

and power over her, if any; her condition thereafter; the length of time after the alleged transaction before information was given thereof by her; the place where said acts are alleged to have been committed; the corroborating evidence [611] if any; what was said by the defendant, if anything, to the said Laura Herrington at the time of the alleged acts; what, if anything, she saw and heard at the time; together with all the other facts and circumstances of the case, as the same have been developed by and established by the proofs in the case, should be considered by you while you are considering whether the defendant is or is not guilty of the crime charged in the first count of the indictment.

XXXI.

You are instructed that Section 2073 of the Compiled laws of Alaska provides as follows:

“That if any person attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, such person, when no other provision is made by law for the punishment of such attempt, upon conviction thereof, shall be punished as follows:

First: If the crime so attempted be punishable by imprisonment in the penitentiary or county (Federal) jail, the punishment for the attempt shall be by like imprisonment, as the case may be, for the term not more than half the longest period prescribed as a punishment for such crime.

Second: If the crime so attempted be punishable by fine, the punishment for the attempt shall be by fine not more than half the amount of the largest fine prescribed as a punishment for such crime."

XXXII.

You are instructed that with reference to the second count of the indictment, an attempt to commit a crime is composed of two elements. First, the intent to commit it, and second, a direct ineffectual act done towards its commission. The act must reach far enough toward the accomplishment of the desired results to amount to the commencement of its consummation. While it need not be the last proximate act to the consummation of the offense attempted to be perpetrated, it must approach sufficiently near to it to stand either as the first or some subsequent step in a direct movement toward the commission of the offense after the preparations are made.

Applying these principals of law, if you find from the evidence, beyond a reasonable doubt, that at the home of Laura Herrington [612] in Fairbanks, on the evening of February 14th, 1916, (the said Laura Herrington being under the age of sixteen years,) the defendant arranged and agreed with the said Laura Herrington to meet her at the shop of J. P. Rose on Lacey Street, in said town, on the evening of February 15th, 1916, for the purpose of then and there having unlawful and felonious sexual intercourse with her, and that in pursuance of said arrangement, the said Laura Herrington kept her appointment by going to said shop as agreed, and was

there met by the defendant still intending to carry out said arrangement to have unlawful and felonious sexual intercourse with her, and regardless of whether said Laura Herrington would or would not have continued to surrender herself to the complete act of sexual intercourse, you further find, beyond a reasonable doubt, that without any change of purpose or intent on the part of the defendant he was prevented from perpetrating said crime by the intervention of any outside agency, then I instruct you that he is guilty of attempt to commit rape as charged in the second count of the indictment. If, on the other hand, you find from the evidence that the defendant on the 14th day of February, 1916, simply solicited the said Laura Herrington to have unlawful and felonious sexual intercourse with him at the shop of J. P. Rose on the evening of the 15th day of February, 1916, and thereafter made no arrangement, nor attempted to make any arrangement with the said J. P. Rose for the use of said shop for said unlawful and felonious purpose, and entirely abandoned said arrangements with Laura Herrington, then you should acquit the defendant of the charge contained in the second count of the indictment.

XXXIII.

The jury should agree upon a verdict. No juror, from mere pride of opinion hastily formed or expressed, should refuse to agree nor, on the other hand, should he surrender any conscientious views founded on the evidence. It is the duty of each juror to reason with his fellows concerning the facts with an honest desire to arrive at the truth, and with a view

of arriving at a verdict. It should be the [613]
object of all the jury to arrive at a common conclusion, and to that end to deliberate together with calmness.

It is your duty to agree upon a verdict if that be possible without a violation of conscientious convictions.

In compliance with the law, I have prepared four forms of verdict which you will take with you to your jury-room, and, when you shall have unanimously agreed upon a verdict, you will sign, by your foreman, that form upon which you shall have so agreed, and return the same into court as your verdict, and the other forms you will destroy.

The forms are:

1. Guilty on the first count and guilty on the second count of the indictment.

2. Guilty on the first count and not guilty on the second count of the indictment.

3. Not guilty on the first count and guilty on the second count of the indictment.

4. Not guilty on the first count and not guilty on the second count.

I now hand you also the written instructions which I have just read to you, for your guidance, together with the Indictment and the exhibits in the case, all of which you will return into court with your verdict.

Given at Fairbanks, Alaska, March 14th, 1916.

CHARLES E. BUNNELL,

District Judge.

[Indorsements.] [614]

At the conclusion of the reading by the Court of

its written instructions to the jury, the defendant, by his attorneys, did, in the presence of the jury and before they retired to deliberate upon their verdict, take the following exceptions:

Defendant's Exceptions to Instructions of Court to Jury.

The defendant excepts to Instruction Number 12 given and read to the jury, for the reason that it is an abstraction purely, and not directing the jury's attention to the particular evidence referred to, and in nowise aiding them to come to a correct conclusion as to the evidence the effect of which is sought to be limited.

The defendant excepts to Instruction Number 13 as given and read to the jury, as not correctly stating the law attempted to be covered in said instruction.

The defendant excepts to Instruction Number 15 as given and read to the jury, for the reason that it is an abstraction, tends to mislead, and is not a correct statement of the law attempted to be charged.

The defendant excepts to Instruction Number 17 as given and read to the jury, as not a correct statement of the law attempted to be covered in said instruction. [615]

Defendant excepts to Instruction Number 18 as given and read to the jury, as singling the defendant out from all other witnesses in the case, and laying special stress upon the question of his interest in the result of the trial, and as a matter of fact, the instruction should apply to all witnesses in the case if the jury believe they have any interest in the result of the trial.

Defendant excepts to Instruction Number 20 as given and read by the Court, for the reason that the same is not a complete or accurate statement of the law attempted to be covered by said instruction, and not properly covered by other instructions in the case.

Defendant excepts to Instruction Number 21 as given and read to the jury, for the reason that the same is not a correct statement of the law attempted to be charged therein; for the further reason that nowhere else in said instructions are the omissions, constituting a correct statement of the law involved in this construction of the law, supplied.

Defendant excepts to Instruction Number 22 as given and read by the Court, for the reason that the same is not an accurate statement of the law involved and attempted to be charged in said instruction, nor is the error corrected or cured by any correct instruction in the case. [616]

Defendant excepts to Instruction Number 23 as given and read to the jury, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction.

The defendant excepts to Instruction Number 24 as given and read to the jury, for the reason that the same is not a correct statement of the law attempted to be charged in said instruction, and that the defects therein are not supplied by any other instruction.

The defendant excepts to Instruction Number 25 as given and read to the jury, for the reason that the same is not correct instruction of the law attempted

to be set out in said instruction.

The defendant excepts to Instruction Number 26 as given and read to the jury, for the reason that the same is an incorrect statement of the law, misleading; and for the further reason that the jury should have been instructed to totally disregard statements made by the witness Laura Herrington to said Ed Hall, and for the further reason that they are not competent to prove any fact involved in this case.

The defendant excepts to Instruction Number 27 given and read to the jury, for the reason that the same is incomplete, misleading, and not a correct statement of the law attempted to be given in said instruction. [617]

The defendant excepts to Instruction Number 28 given and read by the Court, for the reason that the same is incomplete, misleading, not a correct statement upon the question of intent and the necessary proof required to prove such intent upon the part of the defendant.

The defendant excepts to Instruction Number 29 as given and read by the Court, for the reason that the same is incomplete, misleading, and not a correct statement or an accurate statement of the law of corroboration of a female upon whom a rape is alleged to have been committed.

The defendant excepts to Instruction Number 30 as given and read by the Court, for the reason that the same is an abstraction, and for the further reason that the latter part of said instruction has no application to any facts in this case or to the crimes charged in this case, and is misleading, and tends

to confuse and mislead the jury upon the question of abandonment.

The defendant excepts to Instruction Number 32 as given and read by the Court, for the reason that the same is involved, contradictory in itself, misleading, not applicable to the issues presented by the Indictment; that it is not the law of the case from any standpoint, and the hypothesis upon which it is based fails to collate all the material elements of the charge as a basis for the conclusion of the Court. [618]

The COURT.—All of which exceptions are allowed.

I will change Instruction Number 12, and read the same to the jury.

Gentlemen of the jury: The Court desires to modify or explain—not explain, but to modify Instruction Number 12. The Court will now read to you Instruction Number 12 (reads):

“You are instructed that certain testimony has been admitted in this case for specified and limited purposes which, at the time of its reception by the Court, was so limited. You will bear in mind, and confine yourselves in the consideration of such testimony, to the limited purpose for which it was so admitted.”

That is instruction Number 12 as originally read to you.

Now, in addition to that, the Court has added (reads):

“A particular application of this instruction is directed to the evidence of the witness J. H.

Miller wherein he testified to statements made to him by Laura Herrington prior to the investigation testified to by him; said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception."

The defendant excepts to Instruction Number 12 as amended by the Court and as read to the jury, for the reason that the same is an abstraction, and is failing to tell the jury or direct them as to what purpose, if at all, the same could be lawfully and legally considered by them; that the Court should have instructed the jury in this connection that all of the evidence of the witness J. H. Miller with reference to any conversation upon the part of Laura Herrington relative to the commission of the offense charged in Court 1 of the indictment herein was hearsay evidence, not competent to be considered by the jury for any purpose, and should have been withdrawn by the instruction of the Court from the consideration of the jury; that if there is any lawful purpose or legal reason why said testimony might or should [619] be considered by the jury, that such specific purpose should be pointed out to the jury, and should not be left to the jury to guess at.

The COURT.—Which exception is allowed.

[620]

The defendant presented to the Court, and requested the Court to give to the jury the following written instructions: [621]

Instructions Requested by Defendant.

No. 708—Cr.

No. 1.

The Court instructs the jury that they are the sole judges of the credibility of any witnesses who testified in this case, and if they believe from the evidence that any witness has testified falsely herein they are at liberty to disbelieve his or her testimony in whole or in part. And if any witness before testifying in this case, has made any statement out of court, concerning any of the material matters, materially different and at variance with what he or she stated on the witness-stand, then this jury are instructed by the Court that these facts tend to impeach either the recollection or the truthfulness of such witness; and the jury should consider these facts in estimating the weight which ought to be given to his or her testimony.

Refused as requested—CHARLES E. BUN-
NELL. [622]

No. 2.

The jury is instructed that evidence is of two classes: direct and positive or indirect, presumptive and circumstantial, and if the evidence in this case discloses that a portion of the evidence is indirect, presumptive and circumstantial, then in the consideration of such indirect, presumptive and circumstantial evidence the jury must be convinced that such circumstances are absolutely incompatible, upon any reasonable hypothesis with the innocence of the defendant and incapable of explanation upon any rea-

sonable hypothesis other than the guilt of the accused and if the jury is not so convinced of the guilt of the defendant from such indirect, presumptive and circumstantial evidence together with the direct and positive evidence, the verdict must be to acquit the defendant.

Covered by instructions given—CHARLES E.
BUNNELL. [623]

No. 3.

The jury is further instructed that the rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the government the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid anyone who is in fact guilty of crime to escape, but is a humane provision of law, intended, so far as human agencies can, to guard against the danger of any innocent person being unjustly convicted. By a reasonable doubt is meant that kind of a doubt interposed in the graver transactions of life, after comparison and consideration of the facts and testimony involved, would cause a reasonable and prudent man to hesitate and pause. It follows therefore that after such consideration the jury should acquit defendant unless they can feel an abiding conviction to a moral certainty of the truth of the charge beyond a reasonable doubt.

Covered by instructions given—CHARLES E.
BUNNELL. [624]

No. 4.

The jury is further instructed that the presumption of innocence is not a mere form, to be disregarded

at pleasure, but it is an essential, substantial part of the law of the land and binding on the jury in this case, as in all criminal cases; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption, which clings to him, surrounds, shields and protects him throughout the entire trial of this case, and to acquit the defendant unless the evidence in the case convinces you of his guilt as charged, beyond all reasonable doubt.

Refused as requested.—CHARLES E. BUNNELL. [625]

No. 5.

The jury are instructed that, when a man's conduct may be consistently and as reasonably, from the evidence, referred to one of two motives, one criminal and the other innocent, it is your duty to presume that such conduct is actuated by the innocent and not by the criminal.

Refused as requested.—CHARLES E. BUNNELL. [626]

No. 6.

The jury is instructed that if the testimony in this case in its weight and effect be such that two conclusions can be reasonably drawn from it, the one favoring the innocence of the defendant, and the other tending to establish his guilt, the law makes it your duty to accept the conclusion tending towards the innocence.

Refused as requested.—CHARLES E. BUNNELL. [627]

No. 7.

(The jury is instructed that the witness Laura

Herrington is in law a competent witness; but the credibility of her testimony and how far she is to be believed, is to be determined by the jury, and is more or less credible according to the circumstances of facts that concur in that testimony.)

Given.

(It is one thing whether the testimony of a witness be heard; another thing whether that testimony be believed when it is heard.)

Refused.

It is true that the accusation of rape is one easily to be made and hard to be proved, and harder to be defended by the party accused, though ever so innocent.)

Covered.—CHARLES E. BUNNELL.

[628]

No. 8.

The jury is instructed that the testimony of the witness Laura Herrington should be cautiously scrutinized, and the jury should diligently guard themselves from the undue influence of the sympathy in her behalf which her testimony is apt to excite. If she concealed or imparted information of the offense; the person to whom such information was imparted, the conditions under which it was so imparted; as well as the place of the commission of the offense charged, the surroundings, the time, the season, the condition of weather, these and other circumstances should be considered by the jury; also the manner in which she testifies, the consistency of her testimony, its probability or improbability and her de-

meanor on the witness-stand should be fairly and carefully viewed by the jury, before the jury is satisfied with the truth of her evidence.

Refused except as covered in instructions given.—CHARLES E. BUNNELL.

[629]

No. 9.

The first count of the indictment charges the defendant with the crime of statutory rape alleged to have been committed by him in a vacant cabin in Fairbanks, on the evening of December 23, 1914, by carnally knowing one Laura Herrington, she then and there being a female person under the age of sixteen years and he being over that age. The Government upon this charge relies for a conviction on the testimony of the said Laura Herrington, and no other witness was called by the Government to testify directly to the time and place or circumstances of the alleged offense.

You are instructed that where, as in this case, to prove the charge contained in the said first count, the Government relies upon the uncorroborated testimony of the said female person unsustained by other evidence, or by facts or circumstances corroborating it, you should view her testimony with great caution.

You are further instructed that in considering her testimony, you may take into consideration the facts and circumstances surrounding the place where the alleged offense is charged to have been committed—all the facts and circumstances at the time and immediately after the alleged offense was committed—

in determining the weight of her testimony, and the reasonableness thereof, as showing to your minds the credit to be given to the same.

Refused.—CHARLES E. BUNNELL.

[630]

No. 10.

In the second count in the indictment the defendant is charged with an attempt to commit the crime of statutory rape, by carnally knowing and abusing one Laura Herrington, she being at the time under the age of sixteen years and he being over that age.

An attempt to commit a crime is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime. There is a class of acts which may be done in pursuance of an intention to commit a crime, but not in legal sense, a part of it, and do not constitute an indictable attempt; such as the purchase of a gun with the design of committing murder, or the procuring of poison with the same intent. These and like acts are considered in the nature of mere preliminary preparation, and not as acts towards the consummation of the crime. To constitute an indictable attempt to commit the crime of statutory rape, something more than mere intention is necessary and even more than solicitation.

It follows from these principles of law, that if you find from the evidence, beyond a reasonable doubt, that at the house of said Laura Herrington, in Fairbanks, on the evening of February 14, 1916, the de-

fendant arranged and agreed with said girl (she then being under sixteen years [631] of age and he being over that age), to meet her at the shop of J. P. Rose, on Lacey Street, in said town on the evening of February 15, 1916, for the purpose of then and there having carnal intercourse with her; that on the evening of said February 15, 1916, defendant did go to said shop, and after getting there engaged in conversation with said Rose who was present in said shop, but if you further find from the evidence or entertain a reasonable doubt of the truth thereof that, while in said shop on said evening, defendant committed no act in furtherance of said arrangement with Laura Herrington, but on the contrary for some or any reason, abandoned such arrangement and purpose; that after such abandonment of arrangement and purpose the said Laura Herrington came to the shop of said Rose pursuant to said arrangement, but the defendant did and said nothing to her in furtherance of such previous agreement at her home, then I charge you that he is not guilty of an attempt to commit rape as charged in said second count, and you should acquit him of such charge of attempt.

The defendant denies that he made any arrangement or had any agreement at any time with said Laura Herrington at her home, or at any other place, to have carnal intercourse, with her on the evening of February 15, 1916, or at any other time, at the shop of J. P. Rose, on Lacey Street, in [632] Fairbanks, or at any other place. If you believe from all the evidence in the case, both direct

and circumstantial, that such denial is true, or entertain a reasonable doubt of its truth, then you must acquit of the charge of attempt contained in said second count.

Refused as requested.—CHARLES E. BUNNELL. [633]

No. 11.

If you find from the evidence that the said Laura Herrington at and before the time she gave her testimony before you, was a person of bad morals in the matter of chastity and was at such times unchaste, that fact of itself would not mean that the crime of statutory rape and the attempt to commit such crime upon her, with her consent, could not be effected. Such evidence could only be considered by you as effecting her credibility as a witness.

Refused.—CHARLES E. BUNNELL.

[Indorsement.] [634]

The defendant, in the presence of the jury and before they retired to deliberate upon their verdict, took the following exceptions:

The defendant excepts to the ruling of the Court refusing to give and read to the jury Instructions from Number 1 to 11 requested by the defendant, for the reason that the same are correct statements of law as to the points covered by said instructions, and no similar, proper or adequate statements of the law have been given elsewhere by the Court in its instructions as given and read to the jury.

Which exception is allowed by the Court. [635]

And now in furtherance of justice, and that right

may be done, the defendant presents the foregoing as his Bill of Exceptions in this case, and prays that the same may be settled and allowed and signed and certified by the Judge of this Court in the manner provided by law.

T. A. MARQUAM,
BION A. DODGE,
Attorneys for Defendant,
Fairbanks, Alaska.

Due service of the above proposed Bill of Exceptions is hereby admitted this eighth day of May, 1916.

R. F. ROTH,
United States District Attorney. [636]
[Title.]

**Order Approving, Allowing and Settling Bill of
Exceptions.**

BE IT REMEMBERED: That upon this the 15th day of May, 1916, the above-named defendant duly presented the foregoing bill of exceptions for settlement, which said proposed bill of exceptions was served and filed within the time allowed by law by the orders of this Court, which said bill of exceptions consists of the foregoing typewritten pages of the proceedings and testimony of the witnesses given on behalf of the plaintiff and defendant as well as the exhibits and documentary evidence introduced on the trial of said cause and the instructions of the Court and defendant's exceptions thereto and the instructions proposed by the defendant with the denial of the Court to give the same and the exceptions thereto by defendant.

The foregoing constitutes a full and true report of all the proceedings had upon the trial of said cause and of the objections and exceptions made and taken during said trial and the rulings of the Court thereon.

And it appearing to the Court from an examination of said bill of exceptions that the same contains all the evidence, testimony and exhibits introduced and given upon the trial of said cause as well as the proceedings therein not of record, and is in all respects true and correct. [637]

Now, therefore, on motion, it is hereby ordered that the foregoing typewritten pages be and the same is hereby approved, allowed and settled as the bill of exceptions in the above-entitled cause and made a part of the record herein.

It is further ordered and adjudged that the foregoing bill of exceptions constitutes all of the evidence, testimony, exhibits and proceedings had in the above-entitled cause not appearing of record, and that the same is in all respects full, true and correct, and has been filed and presented within the time allowed by law and the orders of this Court.

Done at Fairbanks, Alaska, this 15th day of May, 1916.

CHARLES E. BUNNELL,

Judge of the District Court, Territory of Alaska,
Fourth Division.

Entered in Court Journal No. 13, page 562.

[Indorsement.] [638]

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. May 15, 1916. J. E. Clark,

Clerk. By Sidney Stewart, Deputy. Refiled in the District Court, Territory of Alaska, 4th Div. May 15, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [639]

[Title.]

Petition for Writ of Error and Supersedeas.

W. H. Wooldridge, the defendant in the above-entitled cause, feeling himself aggrieved by the verdict of the jury in said cause, and the judgment pronounced and entered on the eighth day of April, A. D. 1916, comes now by T. A. Marquam and Bion A. Dodge, his attorneys, and complains that in the record and proceedings had in said cause, and also in the rendition of the said verdict and judgment in said above-entitled cause in said District Court for the Territory of Alaska, Fourth Judicial Division, thereof, at the March A. D. 1916 term thereof, manifest error has happened to the great damage of said defendant, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security and bond which the defendant shall give and furnish upon said writ of error as a supersedeas, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

WHEREFORE said defendant prays for the allowance of a writ of error, and for an order fixing the amount of security by bond for a stay of proceedings and supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by [640] the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 11th day of April, A. D. 1916.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant.

Allowed.

CHARLES E. BUNNELL,

District Judge.

Received a copy hereof this 11th day of April, 1916.

R. F. ROTH,

Dist. Atty.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Petition for Writ of Error and Supersedeas. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 11, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [641]

[Title.]

Assignment of Errors.

Comes now W. H. Wooldridge, the plaintiff in error, and files the following Assignment of Errors upon which he will rely upon his prosecution of the

Writ of Error in the above-entitled cause:

I.

The Court erred in overruling defendant's objection to the introduction of any testimony whatever under the indictment and the two counts thereof, for the reason and upon the grounds that the statement of facts set forth therein (count two) do not constitute a crime; excepted to by defendant.

II.

The Court erred in allowing the testimony of Laura Herrington a witness for the prosecution, to go to the jury during the trial of said cause over the objection of defendant's counsel, to the effect that she had a conversation with Ed Hall (a witness) and told Ed Hall she had been out that night with Wooldridge, and that Wooldridge had given her two dollars and a half and owed her a dollar more, all of which was duly excepted to by defendant.

III.

The Court erred in allowing the testimony of said witness Laura Herrington to go before the jury during said trial over the objection of defendant's counsel, to the effect that two or three days after her alleged meeting with Wooldridge, she met her sister Catherine on the street one day and "had a talk with her about the [642] affair that occurred between her and Wooldridge," and "I showed her the money"; duly excepted to by defendant.

IV.

The Court erred in admitting the testimony of Ed Hall, a witness for the prosecution, before the jury during said trial over the objections of defend-

ant's counsel, to the effect that he met Laura Herrington at Morency's home two or three days before Chirstmas and "she showed me two dollars and a half which she said she got from Wooldridge and would get a dollar more," which was for going to a cabin with Wooldridge who had done something to her; duly excepted to by defendant.

V.

The Court erred in admitting the testimony of George Berg, a witness for the prosecution before the jury during said trial, over the objections of defendant's counsel and motion to strike same as to what was said and done in Rose's shop February 15, 1916, about 8 o'clock P. M., the same being the conclusions of witness from what he afterwards heard and not what he heard or witnessed, the testimony showing he (Berg) admitted he could not hear what was said "only a word now and then"; excepted to by defendant.

VI.

The Court erred in admitting the testimony of said witness George Berg before the jury at said trial over the objection of defendant's counsel, to the effect "Some time in the fore part of February I was informed I was to undertake the investigation of Wooldridge and learn whether or not Laura Herrington was telling the truth," and testimony of like and similar character, exceptions by defendant.

VII.

The Court erred in allowing the testimony of J. H. Miller, a deputy marshal, a witness for the Government, to go before the jury at said trial over

the objections of defendant's counsel, to the effect that Roth, the United States Attorney, first apprised witness of facts out of which the indictment grew, and that Roth requested witness to get Laura Herrington and her father and bring them to Roth's [643] office, and witness sent Berg out and he got them, brought them up and had a conversation regarding another case of a similar nature, the Bobby Jones case, then Roth or I asked her (Laura Herrington) if anyone else had ever bothered her and she stated Wooldridge had, then I asked her if Wooldridge had ever bothered her or attempted a thing like that since, and she said to me that Wooldridge had many times, that he had bothered her many times since that time. I told her if he ever bothered her again and tried to make a date with her to go ahead and make a date with him and then let me know about it, and she said she would do so. My idea was to get them together and determine from their conversation whether the girl was telling the truth. The next I heard was when her father, George Herrington, came to me February 14, 1916, and told me his girl had made a date that evening with Wooldridge; then I went down and looked over the house to see if I could put men in there, asked Berg to get a man. I got one and went down and prepared the three men and the house. Berg returned that nothing came of it, so I wanted to go down there and find out from the girl why the arrangement had not been carried out. Next morning George Herrington came to the office and told me, after Berg and I had left, Wooldridge came to the

house and she had made a date with him at Rose's bicycle shop for 8 o'clock next evening. I went up and took a look around Rose's shop to see if there were a chance to place anybody there in shape to overhear a conversation between these people. I found a place through McDermott's store. Then I called my deputies and told them of my plan, told Frank Hall, a deputy, to get the keys of Judge Pratt's office, told McMullen, another deputy, to go with Hall. I told Deputy Berg and Deputy Wood to place themselves by a door where they could see and listen, and I stayed outside and met the girl and her father. I told the girl to talk "about the time you claim Wooldridge had sexual intercourse with you," and she said she would, "And I also told her, if anything comes up" to say "be careful," or some such words, and there would be something that would cause a stop, but to hold a conversation with him, to the admission of which testimony, and the whole, and every part thereof, [644] objection was repeatedly made by defendant's counsel, overruled and excepted to. Motion was made by defendant's counsel to strike same and every part thereof, and denied by the Court, which exception was duly taken.

VIII.

The Court erred in allowing the testimony of said J. H. Miller, over the objection of defendant's counsel to the effect that "Berg and I started to take the girl home; we got down a little ways and we concluded if we wanted to get the truth, we had better question Mr. Rose before he and Wooldridge

talked together. I went to office and sent Deputy McMullen after Mr. Rose and I asked him, took a pad of paper, I had the other boys come in. I asked him some questions, he volunteered some '*questions*' Berg spoke to him about parts of his statement, and I wrote them all down, repeated it, handed him the paper and told him to read it. He hadn't his glasses and I told Deputy Hall to read it. Rose signed it and swore to it. (Paper, Plaintiff's Exhibit 1, shown witness)," and all testimony of like and similar nature, which was objected to by defendant's counsel, who also moved to strike such testimony of Miller, and every part and portion thereof, which motion was denied and exception taken.

IX.

The Court erred in allowing the testimony of J. P. Rose, a witness for the prosecution upon said trial, upon the objections of defendant's counsel, as to what had been said and had occurred in his place, as he had stated same to Chief Deputy Miller and the other deputies in the absence of the defendant.

X.

The Court erred in allowing the testimony of witness George Berg for the prosecution upon said trial, over the objections of defendant's counsel, as to what Berg said what Rose had said, and what Miller and Hall had said, in the marshal's office relative to what had occurred in Rose's place of business that evening in the absence of defendant, and as to what Berg himself said upon the same subject to Rose and others during the absence of defendant. [645]

XI.

The Court erred in permitting the testimony of P. McMullen, a witness for the prosecution upon said trial, over the objections of defendant's counsel, as to the conversation had by and with witness Miller, Berg, Rose and others in the Marshal's office in the absence of defendant.

XII.

The Court erred in permitting the testimony of J. P. Rose, a witness for the prosecution upon said trial, over the objections of defendant's counsel, as to his testimony before the grand jury in the absence of defendant.

XIII.

The Court erred in permitting the testimony of J. P. Norris, R. M. Crawford, H. N. Shead, William Pendergraft and Tom Utigaard, members of the grand jury and witnesses for the prosecution upon said trial, over the objections of defendant's counsel, to the effect that the witness Rose was sworn before said grand jury, and that Government counsel read witnesses purported extracts from the purported signed statements of witness Rose and asked them if that was what Rose testified to before the grand jury, to which questions the said witnesses, and each of them, answered "Yes," and like and similar questions, all of which were duly excepted to by defendant's counsel, overruled, exceptions taken, moved to be stricken, denied, and exceptions taken.

XIV.

The Court erred in permitting the introduction in

evidence before said jury at said trial, over the objections of defendant's counsel, of the alleged signed statement of J. P. Rose, marked Plaintiff's Exhibit One (1).

XV.

The Court erred in permitting the testimony of Laura Herrington, a witness for the prosecution, to go before the jury at said trial over the objection of defendant's counsel, upon her *redirect* examination, to the effect: Q. "Did you lay down on the coat? A. "Yes." Q. "Were your legs apart?" A. "Yes." [646] Q. "What did defendant do to you?" A. "I can't explain it." Q. "Did you have sexual intercourse?" A. "Yes."

XV.

The Court erred in refusing to permit Bion A. Dodge to testify on behalf of the defendant at said trial, upon objections by Government counsel, relative to the witness, Mrs. George Herrington, having told him that Wooldridge had loaned her a dollar, which testimony was excluded upon the grounds that a proper foundation had not been laid.

XVI.

The Court erred in refusing to permit J. E. Clark, Clerk of the Court, a witness called on behalf of the defendant, to testify at said trial, over the objection of Government counsel, in answer to the following question propounded by defendant's counsel: "Have you among your records a record in your office of an indictment against J. P. Rose for rape"?

XVII.

The Court erred in denying the motion made by the defendant's counsel, upon the close of the testimony of the Government, that the Court direct the jury to return a verdict of not guilty upon the second count in the indictment, upon the grounds, in substance: That the evidence was insufficient to justify a verdict of guilty and that it was against the law, and that upon motion for a new trial the Court should set a verdict of guilty aside, and that the testimony fails to establish the commission of the offense charged, or any offense; there was no intent, no overt act, and whatever was done amounted at the most to but solicitation, and the Alaska statute making an attempt a substantive offense, solicitation is not an attempt; that the testimony did not disclose any act tending to prove the commencement of the consummation of any attempt whatever, and also that the defendant was not prevented or intercepted by any person or persons whomsoever or cause whatsoever and also that said second count failed to charge any offense under the Alaska statute.

XVIII.

The Court erred in denying the motion made by the defendant [647] upon the close of the testimony of the Government, in substance, that the Government then and there elect upon which count in said indictment the Government would stand, and upon which count it would elect to have a verdict found, which motion was denied and exception taken by defendant's counsel.

XIX.

The Court erred in denying the renewal of the motion of defendant to instruct the jury to find a verdict of not guilty upon the conclusion of all of the testimony, substantially upon the same ground as stated upon the previous motion, to the denial of which motion defendant excepted.

XX.

The Court erred in refusing to give to the jury the following instruction during the course of the charge to the jury:

INSTRUCTION NO. 1.

The Court instructs the jury that they are the sole judges of the credibility of any witnesses who testified in this case, and if they believe from the evidence that any witness has testified falsely herein, they are at liberty to disbelieve his or her testimony in whole or in part. And if any witness before testifying in this case, has made any statement out of court, concerning any of the material matters, materially different and at variance with what he or she stated on the witness-stand, then this jury are instructed by the Court that these facts tend to impeach either the recollection or the truthfulness of such witness; and the jury should consider these facts in estimating the weight which ought to be given to his or her testimony.

XXI.

The said Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 2.

The jury is instructed that evidence is of two

classes; direct and positive, presumptive and circumstantial, and if the evidence in this case discloses that a portion of the evidence is indirect, presumptive [648] and circumstantial, then in the consideration of such indirect, presumptive and circumstantial evidence the jury must be convinced that such circumstances are absolutely incompatible, upon any reasonable hypothesis with the innocence of the defendant and incapable of explanation upon any reasonable hypothesis other than the guilt of the accused and if the jury is not so convinced of the guilt of the defendant from such indirect, presumptive and circumstantial evidence together with the direct and positive evidence, the verdict must be to acquit the defendant.

XXII.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 3.

The jury is further instructed that the rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the Government the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid anyone who is in fact guilty of crime to escape, but is a humane provision of law, intended, so far as human agencies can, to guard against the danger of any innocent person being unjustly convicted. By a reasonable doubt is meant that kind of a doubt interposed in the graver transactions of life, after comparison and consideration of the facts and testimony involved, would cause a reasonable and pru-

dent man to hesitate and pause. It follows, therefore, that after such consideration the jury should acquit defendant unless they can feel an abiding conviction to a moral certainty of the truth of the charge beyond a reasonable doubt.

XXIII.

The said Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 4.

The jury is further instructed that the presumption of innocence is not a mere form, to be disregarded at pleasure, but it is an [649] essential substantial part of the law of the land and binding on the jury in this case, as in all criminal cases; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption which clings to him, surrounds, shields and protects him throughout the entire trial of this case, and to acquit the defendant unless the evidence in the case convinces you of his guilt as charged, beyond all reasonable doubt.

XXIV.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 6.

The jury is instructed that if the testimony in this case in its weight and effect be such that two conclusions can be reasonably drawn from it, the one favoring the innocence of the defendant, and the other tending to establish his guilt, the law makes it your duty to accept the conclusion tending towards the innocence.

XXV.

The Court erred in refusing to give to the jury the following instructions:

INSTRUCTION NO. 7.

The jury is instructed that the witness Laura Herrington is in law a competent witness; but the credibility of her testimony and how far she is to be believed, is to be determined by the jury, and is more or less credible according to the circumstances of fact that concur in that testimony. It is one thing whether the testimony of a witness be heard; another thing whether that testimony be believed when it is heard. It is true that the accusation of rape is one easily to be made and hard to be proved, and harder to be defended by the party accused, though ever so innocent.

XXVI.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 8.

The jury is instructed that the testimony of the witness [650] Laura Herrington should be cautiously scrutinized, and the jury should diligently guard themselves from the undue influence of the sympathy in her behalf which her testimony is apt to incite. If she concealed or imparted information of the offense, the person to whom such information was imparted, as well as the place of the commission of the offense charged, the surroundings, the time, the season, the condition of weather, these and other circumstances should be considered by the jury; also

the manner in which she testifies, the consistency of her testimony, its probability or improbability and her demeanor on the witness-stand should be fairly and carefully viewed by the jury, before the jury is satisfied with the truth of her evidence.

XVIII.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 10.

In the second count in the indictment the defendant is charged with an attempt to commit the crime of statutory rape, by carnally knowing and abusing one Laura Herrington, she being at the time under the age of sixteen years and he being over that age.

An attempt to commit a crime is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime. There is a class of acts which may be done in pursuance of an intention to commit a crime, but not in legal sense, a part of it, and so not constitute an indictable attempt; such as the purchase of a gun with the design of committing murder, or the procuring of poison with the same intent. These and like acts are considered in the nature of mere preliminary preparation, and not as acts towards the consummation of the crime. To institute an indictable attempt to commit the crime of statutory rape, something more than intention is necessary and even more than solicitation.

It follows from these principles of law, that if you find from the evidence, beyond a reasonable doubt, that at the house of said Laura Herrington, in Fairbanks, on the evening of February 14, 1916, [651] the defendant arranged and agreed with said girl (she then being under sixteen years of age and he being over that age), to meet her at the shop of J. P. Rose, on Lacey Street, in said town on the evening of February 15, 1916, for the purpose of then and there having carnal intercourse with her; that on the evening of said February 15, 1916, defendant did go to said shop, and after getting there engaged in conversation with said Rose, who was present in said shop, but if you further find from the evidence or entertain a reasonable doubt of the truth thereof that, while in said shop on said evening, defendant committed no act in furtherance of said arrangement with Laura Herrington, but on the contrary, for some or any reason, abandoned such arrangement and purpose; that after such abandonment of arrangement and purpose the said Laura Herrington came to the shop of said Rose pursuant to said arrangement, but the defendant did and said nothing to her in furtherance of such previous agreement at her home, then I charge you that he is not guilty of an attempt to commit rape as charged in said second count, and you should acquit him of such charge of attempt.

The defendant denies that he made any arrangements or had any agreement at any time with said Laura Herrington at her home, or at any other place, to have carnal intercourse with her on the evening

of February 15, 1916, or at any other times, at the shop of J. P. Rose, on Lacey Street, in Fairbanks, or at any other place. If you believe from all the evidence in this case, both direct and circumstantial, that such denial is true, or entertain a reasonable doubt of its truth, then you must acquit of the charge of attempt contained in said second count.

XXVIII.

The Court erred in refusing to give to the jury the following instruction:

INSTRUCTION NO. 11.

If you find from the evidence that the said Laura Herrington at and before the time she gave her testimony before you, was a person [652] of bad morals in the matter of chastity and was at such time unchaste, that fact of itself would not mean that the crime of statutory rape and the attempt to commit such crime upon her, with her consent, could not be effected. Such evidence could only be considered by you as affecting her credibility as a witness. [653]

29.

The Court erred in giving the following instruction to the jury:

NUMBER 12.

You are instructed that certain testimony has been admitted in this case for specified and limited purposes, which at the time of its reception by the Court was so limited. You will bear in mind and confine yourself, in the consideration of such testimony, to the limited purpose for which it was so admitted.

A particular application of this instruction is directed to the evidence of the witness J. H. Miller,

wherein he testified to statements made to him by Laura Herrington prior to the investigation testified to by him, said testimony having been admitted for limited purposes as stated to the jury by the Court at the time of its reception.

30.

The Court erred in giving the following instruction to the jury:

NUMBER 15.

You are instructed that corroborating evidence must be such as tends to connect the accused with an alleged offense, and, as distinguished from evidence of the act itself, is additional evidence of a different character to the same point. It means to strengthen, to add weight or credibility to a thing. [654]

31.

The Court erred in giving the following instruction to the jury.

NUMBER 17.

You are instructed that there are two general classes of evidence; direct and circumstantial. Evidence as to the existence of the main fact in issue, is direct evidence; while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue.

You are instructed that circumstantial evidence is legal and competent evidence, and if it be of such a character as to exclude every other reasonable hypothesis than that of the defendant's guilt, then it is sufficient to warrant a conviction. In other words, such evidence is sufficient to warrant a conviction when it convinces the minds of the jury of

the guilt of the accused beyond a reasonable doubt.

It is not necessary to prove the defendant's guilt by the testimony of eye-witnesses who have seen the offense committed, but such guilt may be established by facts and circumstances from which it may be reasonably and satisfactorily inferred, provided such facts and circumstances establish such guilt beyond all reasonable doubt.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. It is sometimes quite as conclusive in its convincing power as the direct and positive testimony of eye witnesses; and, when it is strong and satisfactory, the jury should so consider it, neither enlarging nor belittling its force. But in order to warrant a conviction on circumstantial evidence, the circumstances taken together should be of a conclusive nature and tendency, leading on the whole to a satisfactory conclusion, and producing in effect a reasonable and moral certainty that the accused and no one else committed the offense charged. [655]

And it is an invariable rule of law that to warrant a conviction upon circumstantial evidence, such facts and circumstances must be shown as are consistent with the guilt of the person charged, and as cannot upon any reasonable theory be true and the person charged be innocent.

32.

The Court erred in giving the following instruction to the jury:

NUMBER 18.

You are instructed that a person charged with the

commission of a crime shall, at his own request, but not otherwise, be deemed a competent witness in his own behalf, the credit to be given to his testimony being left entirely to the jury, under the instructions of the Court.

And you are instructed that in this case the credit to be given to the testimony of the defendant W. H. Wooldridge is left solely to you, and you should give it the same fair and candid consideration you do to the testimony of other witnesses in the case, but you have a right to take into consideration the interest of the defendant in the result of this trial, as affecting his credibility. [656]

33.

The Court erred in giving the following instruction to the jury:

NUMBER 22.

You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse, and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; and whether the girl in fact consented or resisted is immaterial in this case.

In the present case, neither the element of force nor the question of consent has any application.

The witness Laura Herrington could not consent, and the law resists for her.

34.

The Court erred in giving the following instruction to the jury:

NUMBER 26.

Evidence has been admitted tending to show that the witness Laura Herrington informed Ed Hall, shortly after the commission of the crime charged in the first count of the indictment, that she had been ravished by the defendant. Such information, if any, would not be evidence corroborating the testimony of said witness tending to connect the defendant with the commission of the offense of rape, if such offense was committed. The evidence of such information was admitted as tending to confirm or corroborate the truth of her testimony. The law is, that a failure by one, who claims the crime of rape to have been committed upon her, to immediately inform, is looked upon as a suspicious circumstance that her story is a fabrication. Hence, the testimony of such [657] information was admitted for the purpose of testing the accuracy and veracity of the witness Laura Herrington, and for no other purpose.

35.

The Court erred in giving the following instruction to the jury:

NUMBER 28.

The intent to have sexual intercourse, where the female is under the age of consent, is an essential element in the crime, and must be proved beyond a reasonable doubt; and this may be done by proof of any facts or circumstances tending to show such intent.

36.

The Court erred in giving the following instruction to the jury:

NUMBER 32.

You are instructed that with reference to the second count of the indictment, an attempt to commit a crime is composed of two elements; First, the intent to commit it, and second, a direct ineffectual act done towards its commission. The act must reach far enough toward the accomplishment of the desired result to amount to the commencement of the consummation. While it need not be the last proximate act to the commission of the offense attempted to be perpetrated, it must approach sufficiently near to it to stand either as the first or some subsequent step in a direct movement toward [658] the commission of the offense after the preparations are made.

Applying these principles of law, if you find from the evidence, beyond a reasonable doubt, that at the home of Laura Herrington in Fairbanks, on the evening of February 14th, 1916 (the said Laura Herrington being under the age of sixteen years and the defendant being over the age of sixteen years), the defendant arranged and agreed with the said Laura Herrington to meet her at the shop of J. P. Rose, on Lacey Street, in said town, on the evening of February 15th, 1916, for the purpose of then and there having unlawful and felonious sexual intercourse with her, and that in pursuance of said arrangement the said Laura Herrington kept her appointment by going to said shop as agreed, and was there met by the defendant still intending to carry out said arrangement to have unlawful and felonious sexual intercourse with her, and regardless of whether said

Laura Herrington would or would not have continued to surrender herself to the completed act of sexual intercourse, you further find, beyond a reasonable doubt, that without any change of purpose or intent on the part of the defendant he was prevented from perpetrating said crime by the intervention of any outside agency, then I instruct you that he is guilty of attempt to commit rape as charged in the second count of the indictment. If, on the other hand, you find from the evidence that the defendant on the 14th day of February, 1916, simply solicited the said Laura Herrington [659] to have unlawful and felonious sexual intercourse with him at the shop of J. P. Rose on the evening of February 15th, 1916, and thereafter made no arrangement, nor attempted to make any arrangement with the said J. P. Rose for the use of said shop for said unlawful and felonious purpose, and entirely abandoned said arrangement with Laura Herrington, then you should acquit the defendant of the charge contained in the second count of the indictment. [660]

XXXVII.

The Court erred in refusing to grant a new trial to defendant upon his motion duly made therefor.

XXXVIII.

The Court erred in refusing to grant defendant's motion in arrest of judgment.

XXXIX.

The Court erred in pronouncing judgment and sentence upon the defendant.

WHEREFORE the said defendant and plaintiff in error prays that the judgment of the said District

Court for the Fourth Division of the Territory of Alaska be reversed and that said District Court be directed to dismiss the indictment in said cause or to grant a new trial of said cause.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant and Plaintiff in Error.

Received a copy hereof this 11th day of April, 1916.

R. F. ROTH,

Dist. Atty.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Assignment of Errors. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 11, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [661]

[Title.]

Minutes of Court—April 11, 1916.

Order Allowing Petition for Writ of Error.

Now, at this time, came R. F. Roth, United States Attorney and in behalf of the Government; came also the defendant in the custody of the United States marshal with his attorney Bion A. Dodge and defendant's petition for Writ of Error having been duly filed in said cause, said petition is hereby allowed by the Court.

CHARLES E. BUNNELL,

District Judge. [662]

[Title.]

**Order Allowing Writ of Error and Fixing Amount of
Supersedeas Bond.**

The defendant, W. H. Wooldridge, having this day duly filed his petition for a writ of error from the record and proceedings had in said cause and also the verdict and judgment therein and thereon, to the United States Circuit Court of Appeals for the Ninth Circuit, together with an Assignment of Errors, within due time, and also praying that an order be made fixing the amount of bond for a supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by the said United States Circuit Court of Appeals for the Ninth Circuit, and said petition having this day been duly allowed;

IT IS ORDERED, that a writ of error be, and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the proceedings and record, verdict, judgment, and sentence herein.

AND IT IS FURTHER ORDERED, that upon the defendant filing with the Clerk of this Court a good and sufficient bond in the sum of Seven Thousand Dollars (\$7,000), to the effect that the said defendant and plaintiff in error shall in all respects abide and perform the orders and judgments of the Appellate Court, the said United States Circuit Court of Appeals for the Ninth Circuit, and if he fail to do so in any particular, the principal, sureties and signers of

said bond will pay to the United States of America the said sum of Seven Thousand Dollars (\$7,000), which bond shall in form and substance [663] comply with the requirements of law and shall be approved by this Court, and when said bond is given and approved, all further proceedings in this court under said record, judgment and sentence be, and they are hereby suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit, and in the meantime and while the said defendant and plaintiff in error shall be entitled to his discharge from custody and imprisonment.

Dated this 11th day of April, A. D. 1916.

CHARLES E. BUNNELL,

Judge District Court, Fourth Judicial Division, District and Territory of Alaska.

Received a copy hereof this 11th day of April, 1916.

R. F. ROTH,

Dist. Atty.

Entered in Court Journal No. 13, page 505.

[Endorsed]: No. 708—Cr. In District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 11, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [664]

[Title.]

Bond on Writ of Error.

A judgment having been given on the eighth day of April, A. D. 1916, whereby the defendant herein, W. H. Wooldridge, was adjudged and found guilty of the crime of attempt to commit rape upon the person of one Laura Herrington, and was condemned and sentenced by the Honorable Charles E. Bunnell, the Judge of said court, to imprisonment in the United States Penitentiary at McNeil's Island, in the State of Washington, for the period of six years, and he having appealed and been granted a writ of error from said judgment, and been duly admitted to bail in the sum of seven thousand dollars (\$7,000) ;

We, Edgar Wickersham, property owner, Thomas Keel, merchant, C. P. Gius, miner, all residents of the town of Fairbanks, Alaska, hereby undertake that the above-named W. H. Wooldridge shall in all respects abide and perform the orders and judgment of the Appellate Court, the United States Circuit Court of Appeals for the Ninth Circuit, upon the appeal, or if he fail to do so in any particular, that we will pay to the United States the sum of seven thousand dollars (\$7,000).

IN WITNESS WHEREOF we have hereunto set our hands and seals this 17th day of April, A. D. 1916.

EDGAR WICKERSHAM. (Seal)

THOMAS KEEL. (Seal)

C. P. GIUS. (Seal)

In presence of :

BION A. DODGE.

SIDNEY STEWART. [665]

United States of America,
Territory of Alaska,—ss.

Edgar Wickersham, Thomas Keel, C. P. Gius, each being first duly sworn, upon oath, each for himself says, that he is one of the sureties named in and who subscribed his name to the above and within undertaking; that he is a resident of the Territory of Alaska; that he is not an attorney or counselor at law; marshal, clerk of any court, or other officer of any court, and that he is worth the sum of Five Thousand Dollars (\$5,000), exclusive of property exempt from execution, and over and above all his just debts and liabilities.

EDGAR WICKERSHAM.

THOMAS KEEL.

C. P. GIUS.

Subscribed and sworn to before me this 17th day of April, 1916.

CHARLES E. BUNNELL,

District Judge.

Taken and acknowledged before me this 17th day of April, A. D. 1916.

CHARLES E. BUNNELL,

Judge of the District Court for the Territory of
Alaska, Fourth Division.

Approved this 17th day of April, 1916.

CHARLES E. BUNNELL,

District Judge.

[Endorsed]: No. 708—Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Bond on Writ of Error. Filed in the District Court, Territory of Alaska, 4th Div., Apr. 17, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [666]

[Title.]

Minutes of Court—April 19, 1916.

Order Approving Bond.

2:00 P. M.

Now, on April 17th, 1916, R. F. Roth, United States Attorney, appearing in behalf of the Government and Bion A. Dodge appearing in behalf of the defendant the matter of the qualifications of the sureties on the bond of defendant herein came before the Court and the bond of defendant herein was approved by the Court.

CHARLES E. BUNNELL,

District Judge. [667]

[Title.]

Order Directing Release of Defendant.

ORDER TO UNITED STATES MARSHAL.

To the United States Marshal for the Fourth Division of the Territory of Alaska.

W. H. Wooldridge, who is detained by you in execution of a judgment, whereby he is condemned to a term of imprisonment in the United States Penitentiary at McNeil's Island, in the State of Washington, for a period of six years, having appealed from

said judgment and given sufficient bail to abide and perform the judgment of the Appellate Court, the United States Circuit Court of Appeals for the Ninth Circuit, you are commanded forthwith to discharge him from your custody.

Dated this April 17th, 1916.

CHARLES E. BUNNELL,
Judge District Court, Territory of Alaska, Fourth
Division.

Entered in Court Journal No. 13, page 520.

[Endorsed]: No. 708—Cr. In the District Court, Territory of Alaska, Fourth Division. United States of America vs. W. H. Wooldridge. Order to U. S. Marshal, 4th Div. Received Apr. 17, 1916. Fairbanks, Alaska. Marshal's Docket No. 836. Writ Docketed Apr. 17, 1916. Return Docketed Apr. 17, 1916. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 20, 1916. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [668]

Writ of Error.

UNITED STATES OF AMERICA,—SS.

The President of the United States of America, to
the Honorable CHARLES E. BUNNELL,
Judge of the District Court for the Territory of
Alaska, Fourth Division, GREETING:

Because in the record and proceedings, as also in the rendition of the verdict, sentence and judgment, of a plea of which is in said District Court, before you, between the United States of America, plaintiff, and W. H. Wooldridge, defendant, manifest

error has happened to the great prejudice and damage of the defendant, W. H. Wooldridge, as is said and appears by the petition herein.

We, being willing that said error, if any have been, should be duly corrected, and full speedy justice done to the parties aforesaid, in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so that you have the same in said Circuit on the second day of June, A. D. 1916, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States this third day of May, A. D. 1916.

Attest my hand and seal of the District Court for the Territory of Alaska, Fourth Division, on the day and year last above written.

[Seal]

J. E. CLARK,
Clerk District Court for the Territory of Alaska,
Fourth Division. [669]

Allowed this third day of May, A. D. 1916.

CHARLES E. BUNNELL,
Judge District Court, Territory of Alaska, Fourth
Division.

Service of the above Writ of Error is hereby admitted this third day of May, 1916.

R. F. ROTH,
U. S. Attorney.

[Endorsed]: 708—Cr. United States of America, Plaintiff and Defendant in Error, vs. W. H. Wooldridge, Defendant and Plaintiff in Error. Writ of Error. [670]

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States of America to
R. F. ROTH, United States Attorney for the
Fourth Division of the Territory of Alaska,
Greeting:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Fourth Division, wherein the United States of America is the plaintiff and defendant in error, and W. H. Wooldridge is the defendant and plaintiff in error, to show cause, if any there be, why the sentence and judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the plaintiff in error in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the

United States of America, this third day of May,
A. D. 1916.

CHARLES E. BUNNELL,
Judge District Court, Territory of Alaska, Fourth
Division.

[Seal]

Attest: J. E. CLARK,
Clerk.

Service of the above Citation admitted this 3d day
of May, A. D. 1916.

R. F. ROTH,
United States Attorney.

[Endorsed]: 708—Cr. United States of America,
—ss. United States of America, Plaintiff and De-
fendant in Error, vs. W. H. Wooldridge, Defendant
and Plaintiff in Error. Citation. [671]

[Title.]

Order Extending Return Day on Writ of Error, etc.

Whereas it appearing from the records and files
in the said action that the Writ of Error and Cita-
tion in the above-entitled cause are made returnable
on the second day of June, A. D. 1916, and

Whereas, because of the delays and uncertainties
in the matter of the transmission and transportation
of mail matter between Fairbanks, Alaska, and San
Francisco, California, and

Whereas, the time at which said Writ of Error
and Citation are made returnable as aforesaid is in-
sufficient in which to prepare, copy and certify to
the same, and transmit the same to said city of San

Francisco, at which the same are made returnable, and,

Whereas, the said time is also insufficient in which to permit the clerk of the District Court of the Territory of Alaska, Fourth Division, to prepare, copy and certify to the transcript of the records in said cause, and to transmit the same to said City of San Francisco,

IT IS ORDERED that the time for making said return on said return on said Writ of Error and Citation, and the time of filing the said transcript in the above-entitled cause, be enlarged and extended until the first day of September, A. D. 1916.

CHARLES E. BUNNELL,
Judge of the District Court for the Fourth Division,
District and Territory of Alaska.

[Seal]

Attest: J. E. CLARK,
Clerk. [672]

Service of the above Order admitted this 11th day of May, 1916.

R. F. ROTH,
United States District Attorney.

Entered in Court Journal No. 13, page 555.

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California. United States of America, Plaintiff and Defendant in Error, vs. W. H. Wooldridge, Defendant and Plaintiff in Error. Order Enlarging Return Day. [673]

[Title.]

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, J. E. Clark, Clerk of the United States District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of six hundred and seventy-three pages, numbered from 1 to 673, inclusive, constitutes a full, true and correct transcript of the record on writ of error in Cause No. 708, Criminal, entitled United States of America, Plaintiff, vs. W. H. Wooldridge, Defendant, wherein W. H. Wooldridge is plaintiff in error and the United States of America is defendant in error, and was made pursuant to, and in accordance with, the praecipe of the plaintiff in error filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereon in accordance therewith.

And I do further certify that the index thereof, consisting of pages i to iv, is a correct index of said transcript; also that the costs of preparing said transcript and this certificate, amounting to Two Hundred and Forty-seven and 25/100 Dollars has been paid to me by counsel for plaintiff in error in said action.

IN WITNESS WHEREOF I have hereunto set

my hand and affixed the seal of said Court, this 24th day of July, 1916.

[Seal]

J. E. CLARK,
Clerk of the District Court, 4th Div., Territory of
Alaska.

By Sidney Stewart,
Deputy Clerk.

[Title.]

Order Extending Return Day on Writ of Error, etc.

Whereas it appearing from the records and files in the said action that the Writ of Error and Citation in the above-entitled cause are made returnable on the second day of June, A. D. 1916; and

Whereas, because of the delays and uncertainties in the matter of the transmission and transportation of mail matter between Fairbanks, Alaska, and San Francisco, California; and

Where the time at which said Writ of Error and Citation are made returnable as aforesaid is insufficient in which to prepare, copy and certify to the same, and transmit the same to said City of San Francisco at which the same are made returnable; and,

Whereas the said time is also insufficient in which to permit the clerk of the District Court of the Territory of Alaska, Fourth Division, to prepare, copy and certify to the transcript of the records in said cause, and to transmit the same to said City of San Francisco;

IT IS ORDERED that the time for making said return on said return on said Writ of Error and Ci-

tation, and the time of filing the said transcript in the above-entitled cause, be enlarged and extended until the first day of September, A. D. 1916.

CHARLES E. BUNNELL,
Judge of the District Court for the Fourth Division,
District and Territory of Alaska.

[Seal]

Attest: J. E. CLARK,
Clerk.

Service of the above Order admitted this 11th day of May, 1916.

R. F. ROTH,
United States District Attorney.

Entered in Court Journal No 13, page 555.

[Endorsed]: Docketed. Original. No. 2839. In the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California. United States of America, Plaintiff and Defendant in Error, vs. W. H. Wooldridge, Defendant and Plaintiff in Error. Order Enlarging Return Day.

[Endorsed]: No. 2839. United States Circuit Court of Appeals for the Ninth Circuit. W. H. Wooldridge, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filed August 9, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

W. H. WOOLDRIDGE
Plaintiff in Error

VS.

THE UNITED STATES OF AMERICA
Defendant in Error

Upon Writ of Error to the United States District
Court for the Territory of Alaska,
Fourth Division

Brief of Plaintiff in Error

JAMES J. CROSSLEY, of Portland, Oregon, and
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Filed this ... day of October, 1916

FRANK D. MONCKTON, Clerk

By, Deputy Clerk

Filed

OCT 16 1916

F. D. Monckton,
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STATEMENT OF THE CASE.

This case is one wherein the defendant below and plaintiff in error here, W. H. Wooldridge, was indicted February 18, 1916, on two counts, the first being for statutory rape alleged to have been committed on December 23, 1914, and the second for an attempt to commit rape on February 14, 1916, upon the person of Laura Herrington, a female person under the age of sixteen years, the said Wooldridge being over the age of sixteen years, as set forth in the indictment attempted to be drawn under the

provisions of Sections 1894 and 2073, Compiled Laws of Alaska, 1913. Under this indictment defendant was held in jail without bail, and to both counts of said indictment Wooldridge plead not guilty.

Transcript of Record, pp. 4-9.

The plaintiff in error Wooldridge is a white man, fifty-two years of age, with a family consisting of a wife and three children, and the prosecutrix Laura Herrington is a girl fourteen and one-half years old. Upon the trial of the case before a jury in the court at Fairbanks, Alaska, lasting from March 6 to March 14, 1916, the said Wooldridge was acquitted of the crime charged in the first count and convicted of the crime of attempt to commit rape charged in the second count of said indictment.

Transcript of Record, pp. 4-6, 42, 76, 520.

It appears from the record and evidence produced at the trial of the case that said Wooldridge had located at Fairbanks, Alaska, about the same time the Herrington family did when gold was discovered there in 1903, and that they had been acquainted since that time.

Transcript of Record, pp. 384, 521.

The record and evidence also shows that said Wooldridge had incurred the bitter enmity of the United States marshal, L. T. Irwin, and the United States attorney, R. F. Roth, because he had as a

notary public acknowledged the signature and affixed his seal to an affidavit against Marshal Irwin and likewise to an affidavit against United States Attorney Roth.

Transcript of Record, pp. 18-24, 336-338, 577, 578, 581.

The United States marshal, L. T. Irwin, his deputies and agents, the United States attorney, R. F. Roth, and his agents laid a trap for said Wooldridge, enveigled him into the same and got rid of him by sending him to the penitentiary. In this scheme they secured the co-operation of the girl and her parents.

Transcript of Record, pp. 71-74, 97, 137, 138, 191, 315-321, 383, 407-409, 413.

The girl *alone* testified that she and Wooldridge on the evening of February 14, 1916, made arrangements to meet the next evening at 8 o'clock at J. P. Rose's bicycle repair shop on Lacey Street, in the Town of Fairbanks, Alaska. This was positively denied by Wooldridge.

Transcript of Record, pp. 96, 533.

On the evening of February 15, 1916, said Wooldridge was in the repair shop of J. P. Rose visiting with Rose, as he was accustomed to do for a few minutes four or five times a week, when this girl came into Rose's shop, and Wooldridge testified that she said that somebody was following her and she wanted to hide, but she denied that.

Transcript of Record, pp. 234, 235, 537.

It developed that five deputy marshals were on watch there, and two of them were back of Rose's back room, where they had holes cut through the partition wall to see and hear what happened, and within a very few feet of Rose, Wooldridge and the Herrington girl, so that they could hear and see everything that was said and done.

Transcript of Record, pp. 274-277, 368.

The prosecution offered in evidence plaintiff's exhibit 1, an alleged statement of J. P. Rose, forced from Rose late at night in the office of the United States marshal by five deputy marshals, without place or date designating where it was taken or when, for the purpose of impeaching their own witness Rose, and this was objected to by defendant, but overruled by the court.

Transcript of Record, pp. 229-231, 302.

No demurrer to the indictment was interposed by defendant, but objections to the introduction of evidence were duly made and taken at the trial by the defendant before any testimony was given, as provided by Section 2207, Compiled Laws of Alaska, 1913, for the reason that the alleged facts stated in the second count of the indictment do not constitute a crime, which objection was overruled by the court; exception to said ruling was duly made by defendant and same granted.

Transcript of Record, pp. 75, 76.

At the close of the Government's case in chief, defendant moved for an instructed verdict of not guilty upon the second count of said indictment, for the reasons that (a) the allegations contained in the second count of the indictment are not sufficient to constitute a crime; (b) there is not sufficient evidence produced upon the part of the prosecution to sustain the allegation of said second count if the same did constitute a crime; (c) the evidence adduced on the part of the prosecution is insufficient to warrant the jury in returning a verdict of guilty thereon in that no proof of an attempt toward the commission of the crime of rape had been established, which motion was denied by the court, excepted to by the defendant and exception duly allowed.

Transcript of Record, pp. 487, 488.

This same motion for instructed verdict of not guilty on the second count of said indictment was made when all the evidence on both sides was in, on the grounds that (a) the allegations contained in said second count in said indictment are not sufficient to constitute a crime, in that there are no facts alleged of an attempt, no facts alleged as to the commission of any acts, or the attempted commission of any acts, toward the consummation of the crime of rape; (b) the evidence introduced in this case is insufficient to support a verdict of guilty, and it does not even tend to prove any acts or any attempt to commit any acts toward the consummation of the offense alleged; and (c) the said

second count in said indictment does not attempt to state the commission of any crime, which motion was denied by the court, excepted to by the defendant and exceptions duly allowed.

Transcript of Record, pp. 597, 598.

There were also many other motions and objections made by the defendant and interposed to the evidence introduced by the prosecution, which the court denied and overruled and to which the defendant duly excepted, and said exceptions were allowed, and particularly were objections and motions made to the admission of details in connection with the complaint first made by the prosecutrix, as testified to by the prosecutrix, Ed Hall and Catherine Herrington, and likewise to the admission of the testimony of the witness J. H. Miller with reference to what prosecutrix told him during the month of February, 1916, in Roth's office and elsewhere as to Wooldridge having had sexual intercourse with her, and all that testimony relating thereto when they were laying a trap for Wooldridge in Roth's office and elsewhere, for the reasons that it was hearsay, said statements of prosecutrix to the witness Miller having been made some fourteen months after the alleged offense charged in the first count of the indictment occurred, and in the absence of the defendant Wooldridge.

Transcript of Record, pp. 83-87, 202-203, 314-321.

Likewise the defendant took exceptions to many of the court's instructions to the jury, because they did not state the law correctly, and said exceptions were allowed, and said defendant requested certain instructions, which stated the law correctly, to be given to the jury, practically all of which were refused by the court.

Transcript of Record, pp. 617-629.

Following the verdict of guilty on the second count rendered by the jury, defendant filed a motion for a new trial, because of (a) irregularities in the proceedings of the court and abuse of discretion exercised by the court by which defendant was prevented from having a fair trial; (b) insufficiency of the evidence to justify the verdict of guilty upon said second count in said indictment and that it is against the law; and (c) errors in law occurring at the trial and duly excepted to by defendant; and defendant also filed a motion in arrest of judgment because the facts stated in said second count of indictment did not constitute a crime, and both of these motions were denied by the court, exceptions duly taken by the defendant and allowed by the court.

Transcript of Record, pp. 43-63.

That on account of (1) irregularities in the proceedings of the court and abuse of discretion exercised by the court whereby defendant was prevented from having a fair trial; (2) the errors of law occurring at the trial; and (3) the insufficiency

of the evidence, the defendant was unjustly convicted upon the second count in said indictment whereby he was charged with the attempt to commit the crime of rape, judgment was entered against him and he was sentenced to serve a term of six years in the United States penitentiary at McNeil's Island, in the County of Pierce, State of Washington, and it is to reverse this judgment that plaintiff in error, W. H. Wooldridge, is now here before this court, and for that purpose he relies upon the following

ASSIGNMENT OF ERRORS.

I.

The court erred in overruling defendant's objection to the introduction of any testimony whatever under the indictment and the two counts thereof, for the reason and upon the grounds that the statement of facts set forth therein (count two) do not constitute a crime; excepted to by defendant.

II.

The court erred in allowing the testimony of Laura Herrington, a witness for the prosecution, to go to the jury during the trial of said cause over the objection of defendant's counsel, to the effect that she had a conversation with Ed Hall (a witness) and told Ed Hall that she had been out that night with Wooldridge, and that Wooldridge had given her two dollars and a half and owed her a

dollar more, all of which was duly excepted to by defendant.

III.

The court erred in allowing the testimony of said witness Laura Herrington to go before the jury during said trial over the objection of defendant's counsel, to the effect that two or three days after her alleged meeting with Wooldridge she met her sister Catherine on the street one day and "had a talk with her about the (642) affair that occurred between her and Wooldridge," and "I showed her the money"; duly excepted to by defendant.

IV.

The court erred in admitting the testimony of Ed Hall, a witness for the prosecution, before the jury during said trial over the objections of defendant's counsel, to the effect that he met Laura Herrington at Morency's home two or three days before Christmas and "she showed me two dollars and a half which she said she got from Wooldridge and would get a dollar more," which was for going to a cabin with Wooldridge, who had done something to her; duly excepted to by defendant.

V.

The court erred in admitting the testimony of George Berg, a witness for the prosecution, before the jury during said trial, over the objections of defendant's counsel, and motion to strike same as to what was said and done in Rose's shop Febru-

ary 15, 1916, about 8 o'clock P. M., the same being the conclusions of witness from what he afterwards heard and not what he heard or witnessed, the testimony showing that he (Berg) admitted he could not hear what was said, "only a word now and then"; excepted to by defendant.

VI.

The court erred in admitting the testimony of said witness George Berg before the jury at said trial over the objection of defendant's counsel, to the effect "some time in the fore part of February I was informed I was to undertake the investigation of Wooldridge and learn whether or not Laura Herrington was telling the truth," and testimony of like and similar character; exceptions by defendant.

VII.

The court erred in allowing the testimony of J. H. Miller, a deputy marshal, a witness for the Government, to go before the jury at said trial over the objections of defendant's counsel, to the effect that Roth, the United States attorney, first apprised witness of facts out of which the indictment grew, and that Roth requested witness to get Laura Herrington and her father and bring them to Roth's (643) office; and witness sent Berg out and he got them, brought them up and had a conversation regarding another case of a similar nature, the Bobby Jones case; then Roth or I asked her (Laura Herrington) if anyone else had ever both-

ered her, and she stated Wooldridge had; then I asked her if Wooldridge had ever bothered her or attempted a thing like that since, and she said to me that Wooldridge had many times, that he had bothered her many times since that time. I told her if he ever bothered her again and tried to make a date with her to go ahead and make a date with him and then let me know about it, and she said she would do so. My idea was to get them together and determine from their conversation whether the girl was telling the truth. The next I heard was when her father, George Herrington, came to me February 14, 1916, and told me his girl had made a date that evening with Wooldridge; then I went down and looked over the house to see if I could put men in there, asked Berg to get a man. I got one and went down and prepared the three men and the house. Berg returned that nothing came of it, so I wanted to go down there and find out from the girl why the arrangement had not been carried out. Next morning George Herrington came to the office and told me after Berg and I had left Wooldridge came to the house and she had made a date with him at Rose's bicycle shop for 8 o'clock next evening. I went up and took a look around Rose's shop to see if there were a chance to place anybody there in shape to overhear a conversation between these people. I found a place through McDermott's store. Then I called my deputies and told them of my plan, told Frank Hall, a deputy, to get the keys of Judge Pratt's office, told McMullen,

another deputy, to go with Hall. I told Deputy Berg and Deputy Wood to place themselves by a door where they could see and listen, and I stayed outside and met the girl and her father. I told the girl to talk "about the time you claim Wooldridge had sexual intercourse with you," and she said she would. And I also told her, "if anything comes up," to say "be careful." or some such words, and there would be something that would cause a stop, but to hold a conversation with him, to the admission of which testimony, and the whole and every part thereof (644), objection was repeatedly made by defendant's counsel, overruled and excepted to. Motion was made by defendant's counsel to strike same and every part thereof, and denied by the court, which exception was duly taken.

VIII.

The court erred in allowing the testimony of said J. H. Miller over the objection of defendant's counsel to the effect that "Berg and I started to take the girl home; we got down a little ways and we concluded if we wanted to get the truth we had better question Mr. Rose before he and Wooldridge talked together. I went to the office and sent Deputy McMullen after Mr. Rose, and I asked him, took a pad of paper; I had the other boys come in. I asked him some questions; he volunteered some 'questions'; Berg spoke to him about parts of his statement and I wrote them all down, repeated it, handed him the paper and told him to read it. He

hadn't his glasses, and I told Deputy Hall to read it. Rose signed it and swore to it." (Paper, Plaintiff's Exhibit 1, shown witness), and all testimony of like and similar nature, which was objected to by defendant's counsel, who also moved to strike such testimony of Miller, and every part and portion thereof, which motion was denied and exception taken.

IX.

The court erred in allowing the testimony of J. P. Rose, a witness for the prosecution upon said trial, upon the objections of defendant's counsel, as to what had been said and had occurred in his place, as he had stated same to Chief Deputy Miller and the other deputies in the absence of the defendant.

X.

The court erred in allowing the testimony of witness George Berg for the prosecution upon said trial, over the objections of defendant's counsel, as to what Berg said what Rose had said, and what Miller and Hall had said, in the marshal's office relative to what had occurred in Rose's place of business that evening in the absence of defendant, and as to what Berg himself said upon the same subject to Rose and others during the absence of defendant (645).

XI.

The court erred in permitting the testimony of P. McMullen, a witness for the prosecution upon said trial, over the objections of defendant's counsel, as to the conversation had by and with witness

Miller, Berg, Rose and others in the marshal's office in the absence of defendant.

XII.

The court erred in permitting the testimony of J. P. Rose, a witness for the prosecution upon said trial, over the objections of defendant's counsel, as to his testimony before the grand jury in the absence of defendant.

XIII.

The court erred in permitting the testimony of J. P. Norris, R. M. Crawford, H. N. Shead, William Pendergraft and Tom Utigaard, members of the grand jury and witnesses for the prosecution upon said trial, over the objections of defendant's counsel, to the effect that the witness Rose was sworn before said grand jury, and that Government counsel read witnesses' purported extracts from the purported signed statements of witness Rose and asked them if that was what Rose testified to before the grand jury, to which questions the said witnesses, and each of them, answered "Yes," and like and similar questions, all of which were duly excepted to by defendant's counsel, overruled, exceptions taken, moved to be stricken, denied, and exceptions taken.

XIV.

The court erred in permitting the introduction in evidence before said jury at said trial, over the objections of defendant's counsel, of the alleged signed statement of J. P. Rose, marked Plaintiff's Exhibit One (1).

XV.

The court erred in permitting the testimony of Laura Herrington, a witness for the prosecution, to go before the jury at said trial over the objection of defendant's counsel, upon her redirect examination, to the effect: "Q. Did you lay down on the coat? A. Yes. Q. Were your legs apart? A. Yes." (646). "Q. What did defendant do to you? A. I can't explain it. Q. Did you have sexual intercourse? A. Yes."

XV.

The court erred in refusing to permit Bion A. Dodge to testify on behalf of the defendant at said trial, upon objections by Government counsel, relative to the witness, Mrs. George Herrington, having told him that Wooldridge had loaned her a dollar, which testimony was excluded upon the grounds that a proper foundation had not been laid.

XVI.

The court erred in refusing to permit J. E. Clark, clerk of the court, a witness called on behalf of the defendant, to testify at said trial, over the objection of Government counsel, in answer to the following question propounded by defendant's counsel: "Have you among your records a record in your office of an indictment against J. P. Rose for rape?"

XVII.

The court erred in denying the motion made by the defendant's counsel, upon the close of the testi-

mony of the Government, that the court direct the jury to return a verdict of not guilty upon the second count in the indictment, upon the grounds, in substance, that the evidence was insufficient to justify a verdict of guilty and that it was against the law, and that upon motion for a new trial the court should set a verdict of guilty aside, and that the testimony fails to establish the commission of the offense charged, or any offense; there was no intent, no overt act, and whatever was done amounted at the most to but solicitation, and the Alaska statute making an attempt a substantive offense solicitation is not an attempt; that the testimony did not disclose any act tending to prove the commencement of the consummation of any attempt whatever, and also that the defendant was not prevented or intercepted by any person or persons whomsoever or cause whatsoever, and also that said second count failed to charge any offense under the Alaska statute.

XVIII.

The court erred in denying the motion made by the defendant (647) upon the close of the testimony of the Government, in substance, that the Government then and there elect upon which count in said indictment the Government would stand, and upon which count it would elect to have a verdict found, which motion was denied and exception taken by defendant's counsel.

XIX.

The court erred in denying the renewal of the motion of defendant to instruct the jury to find a verdict of not guilty upon the conclusion of all of the testimony, substantially upon the same ground as stated upon the previous motion, to the denial of which motion defendant excepted.

XX.

The court erred in refusing to give to the jury the following instruction during the course of the charge to the jury:

INSTRUCTION No. 1.

The court instructs the jury that they are the sole judges of the credibility of any witnesses who testified in this case, and if they believe from the evidence that any witness has testified falsely herein, they are at liberty to disbelieve his or her testimony, in whole or in part. And if any witness before testifying in this case has made any statement out of court, concerning any of the material matters, materially different and at variance with what he or she stated on the witness stand, then this jury are instructed by the court that these facts tend to impeach either the recollection or the truthfulness of such witness; and the jury should consider these facts in estimating the weight which ought to be given to his or her testimony.

XXI.

The said court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 2.

The jury is instructed that evidence is of two classes—direct and positive, presumptive and circumstantial—and if the evidence in this case discloses that a portion of the evidence is indirect, presumptive (648) and circumstantial, then in the consideration of such indirect, presumptive and circumstantial evidence the jury must be convinced that such circumstances are absolutely incompatible, upon any reasonable hypothesis, with the innocence of the defendant and incapable of explanation upon any reasonable hypothesis other than the guilt of the accused, and if the jury is not so convinced of the guilt of the defendant from such indirect, presumptive and circumstantial evidence, together with the direct and positive evidence, the verdict must be to acquit the defendant.

XXII.

The court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 3.

The jury is further instructed that the rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the Government the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid any one who is in fact guilty of crime to escape, but is a humane provision of law, intended, so far as human agencies can, to guard against the danger of any innocent person being unjustly con-

victed. By a reasonable doubt is meant that kind of a doubt interposed in the graver transactions of life, after comparison and consideration of the facts and testimony involved, would cause a reasonable and prudent man to hesitate and pause. It follows, therefore, that after such consideration the jury should acquit defendant unless they can feel an abiding conviction to a moral certainty of the truth of the charge beyond a reasonable doubt.

XXIII.

The said court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 4.

The jury is further instructed that the presumption of innocence is not a mere form, to be disregarded at pleasure, but it is an (649) essential, substantial part of the law of the land and binding on the jury in this case, as in all criminal cases; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption which clings to him, surrounds, shields and protects him throughout the entire trial of this case, and to acquit the defendant unless the evidence in the case convinces you of his guilt as charged, beyond all reasonable doubt.

XXIV.

The court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 6.

The jury is instructed that if the testimony in this case in its weight and effect be such that two conclusions can be reasonably drawn from it, the one favoring the innocence of the defendant, and the other tending to establish his guilt, the law makes it your duty to accept the conclusion tending towards the innocence.

XXV.

The court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 7.

The jury is instructed that the witness Laura Herrington is in law a competent witness; but the credibility of her testimony and how far she is to be believed is to be determined by the jury, and is more or less credible according to the circumstances of fact that concur in that testimony. It is one thing whether the testimony of a witness be heard, another thing whether that testimony be believed when it is heard. It is true that the accusation of rape is one easily to be made and hard to be proved, and harder to be defended by the party accused, though ever so innocent.

XXVI.

The court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 8.

The jury is instructed that the testimony of the

witness (650) Laura Herrington should be cautiously scrutinized, and the jury should diligently guard themselves from the undue influence of the sympathy in her behalf which her testimony is apt to incite. If she concealed or imparted information of the offense, the person to whom such information was imparted, as well as the place of the commission of the offense charged, the surroundings, the time, the season, the condition of weather, these and other circumstances should be considered by the jury; also the manner in which she testifies, the consistency of her testimony, its probability or improbability, and her demeanor on the witness stand should be fairly and carefully viewed by the jury, before the jury is satisfied with the truth of her evidence.

XXVII.

The court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 10.

In the second count in the indictment the defendant is charged with an attempt to commit the crime of statutory rape, by carnally knowing and abusing one Laura Herrington, she being at the time under the age of sixteen years and he being over that age.

An attempt to commit a crime is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the sub-

stantive crime. There is a class of acts which may be done in pursuance of an intention to commit a crime, but not in legal sense a part of it, and so not constitute an indictable attempt; such as the purchase of a gun with the design of committing murder, or the procuring of poison with the same intent. These and like acts are considered in the nature of mere preliminary preparation, and not as acts towards the consummation of the crime. To institute an indictable attempt to commit the crime of statutory rape something more than intention is necessary and even more than solicitation.

It follows from these principles of law that if you find from the evidence, beyond a reasonable doubt, that at the house of said Laura Herrington, in Fairbanks, on the evening of February 14, 1916 (651), the defendant arranged and agreed with said girl (she then being under sixteen years of age and he being over that age) to meet her at the shop of J. P. Rose, on Lacey Street, in said town, on the evening of February 15, 1916, for the purpose of then and there having carnal intercourse with her; that on the evening of said February 15, 1916, defendant did go to said shop, and after getting there engaged in conversation with said Rose, who was present in said shop; but if you further find from the evidence or entertain a reasonable doubt of the truth thereof that, while in said shop on said evening, defendant committed no act in furtherance of said arrangement with Laura Herrington, but, on the contrary, for some or any reason, aban-

done such arrangement and purpose; that after such abandonment of arrangement and purpose the said Laura Herrington came to the shop of said Rose pursuant to said arrangement, but the defendant did and said nothing to her in furtherance of such previous agreement at her home, then I charge you that he is not guilty of an attempt to commit rape as charged in said second count, and you should acquit him of such charge of attempt.

The defendant denies that he made any arrangements or had any agreement at any time with said Laura Herrington at her home, or at any other place, to have carnal intercourse with her on the evening of February 15, 1916, or at any other times, at the shop of J. P. Rose, on Lacey Street, in Fairbanks, or at any other place. If you believe from all the evidence in this case, both direct and circumstantial, that such denial is true, or entertain a reasonable doubt of its truth, then you must acquit of the charge of attempt contained in said second count.

XXVIII.

The court erred in refusing to give to the jury the following instruction:

INSTRUCTION No. 11.

If you find from the evidence that the said Laura Herrington at and before the time she gave her testimony before you was a person (652) of bad morals in the matter of chastity and was at such time unchaste, that fact of itself would not mean that the crime of statutory rape and the attempt

to commit such crime upon her, with her consent, could not be effected. Such evidence could only be considered by you as affecting her credibility as a witness (653).

XXIX.

The court erred in giving the following instruction to the jury:

NUMBER 12.

You are instructed that certain testimony has been admitted in this case for specified and limited purposes, which at the time of its reception by the court was so limited. You will bear in mind and confine yourself, in the consideration of such testimony, to the limited purpose for which it was so admitted.

A particular application of this instruction is directed to the evidence of the witness J. H. Miller, wherein he testified to statements made to him by Laura Herrington prior to the investigation testified to by him, said testimony having been admitted for limited purposes, as stated to the jury by the court at the time of its reception.

XXX.

The court erred in giving the following instruction to the jury:

NUMBER 15.

You are instructed that corroborating evidence must be such as tends to connect the accused with an alleged offense, and, as distinguished from evidence of the act itself, is additional evidence of

a different character to the same point. It means to strengthen, to add weight or credibility to a thing (654).

XXXI.

The court erred in giving the following instruction to the jury:

NUMBER 17.

You are instructed that there are two general classes of evidence—direct and circumstantial. Evidence as to the existence of the main fact in issue, is direct evidence; while circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue.

You are instructed that circumstantial evidence is legal and competent evidence, and if it be of such a character as to exclude every other reasonable hypothesis than that of the defendant's guilt, then it is sufficient to warrant a conviction. In other words, such evidence is sufficient to warrant a conviction when it convinces the minds of the jury of the guilt of the accused beyond a reasonable doubt.

It is not necessary to prove the defendant's guilt by the testimony of eye-witnesses who have seen the offense committed, but such guilt may be established by facts and circumstances from which it may be reasonably and satisfactorily inferred, provided such facts and circumstances establish such guilt beyond all reasonable doubt.

Circumstantial evidence is to be regarded by the jury in all cases where it is offered. It is some-

times quite as conclusive in its convincing power as the direct and positive testimony of eye-witnesses; and when it is strong and satisfactory the jury should so consider it, neither enlarging nor belittling its force. But in order to warrant a conviction on circumstantial evidence, the circumstances taken together should be of a conclusive nature and tendency, leading, on the whole, to a satisfactory conclusion, and producing, in effect, a reasonable and moral certainty that the accused and no one else committed the offense charged (655).

And it is an invariable rule of law that to warrant a conviction upon circumstantial evidence, such facts and circumstances must be shown as are consistent with the guilt of the person charged, and as cannot upon any reasonable theory be true and the person charged be innocent.

XXXII.

The court erred in giving the following instruction to the jury:

NUMBER 18.

You are instructed that a person charged with the commission of a crime shall, at his own request, but not otherwise, be deemed a competent witness in his own behalf, the credit to be given to his testimony being left entirely to the jury, under the instructions of the court.

And you are instructed that in this case the credit to be given to the testimony of the defendant

W. H. Wooldridge is left solely to you, and you should give it the same fair and candid consideration you do to the testimony of other witnesses in the case, but you have a right to take into consideration the interest of the defendant in the result of this trial, as affecting his credibility (656).

XXXIII.

The court erred in giving the following instruction to the jury:

NUMBER 22.

You are further instructed that it is the policy of our law, as expressed in the statute, that any female under the age of sixteen years shall be incapable of consenting to the act of sexual intercourse, and that anyone committing the act with a girl within that age shall be guilty of rape, notwithstanding he obtained her consent thereto; and whether the girl in fact consented or resisted is immaterial in this case.

In the present case, neither the element of force nor the question of consent has any application.

The witness Laura Herrington could not consent, and the law resists for her.

XXXIV.

The court erred in giving the following instruction to the jury:

NUMBER 26.

Evidence has been admitted tending to show that the witness Laura Herrington informed Ed Hall, shortly after the commission of the crime charged

in the first count of the indictment, that she had been ravished by the defendant. Such information, if any, would not be evidence corroborating the testimony of said witness tending to connect the defendant with the commission of the offense of rape, if such offense was committed. The evidence of such information was admitted as tending to confirm or corroborate the truth of her testimony. The law is, that a failure by one, who claims the crime of rape to have been committed upon her, to immediately inform, is looked upon as a suspicious circumstance that her story is a fabrication. Hence, the testimony of such (657) information was admitted for the purpose of testing the accuracy and veracity of the witness Laura Herrington, and for no other purpose.

XXXV.

The court erred in giving the following instruction to the jury:

NUMBER 28.

The intent to have sexual intercourse, where the female is under the age of consent, is an essential element in the crime, and must be proved beyond a reasonable doubt; and this may be done by proof of any facts or circumstances tending to show such intent.

XXXVI.

The court erred in giving the following instruction to the jury:

NUMBER 32.

You are instructed that with reference to the second count of the indictment, an attempt to com-

mit a crime is composed of two elements: First, the intent to commit it; and second, a direct ineffectual act done towards its commission. The act must reach far enough toward the accomplishment of the desired result to amount to the commencement of the consummation. While it need not be the last proximate act to the commission of the offense attempted to be perpetrated, it must approach sufficiently near to it to stand either as the first or some subsequent step in a direct movement toward (658) the commission of the offense after the preparations are made.

Applying these principles of law, if you find from the evidence, beyond a reasonable doubt, that at the home of Laura Herrington in Fairbanks, on the evening of February 14, 1916 (the said Laura Herrington being under the age of sixteen years and the defendant being over the age of sixteen years), the defendant arranged and agreed with the said Laura Herrington to meet her at the shop of J. P. Rose, on Lacey Street, in said town, on the evening of February 15, 1916, for the purpose of then and there having unlawful and felonious sexual intercourse with her, and that in pursuance of said arrangement the said Laura Herrington kept her appointment by going to said shop as agreed, and was there met by the defendant still intending to carry out said arrangement to have unlawful and felonious sexual intercourse with her, and regardless of whether said Laura Herrington would or would not have continued to surrender

herself to the completed act of sexual intercourse, you further find, beyond a reasonable doubt, that without any change of purpose or intent on the part of the defendant he was prevented from perpetrating said crime by the intervention of any outside agency, then I instruct you that he is guilty of attempt to commit rape as charged in the second count of the indictment. If, on the other hand, you find from the evidence that the defendant, on the 14th day of February, 1916, simply solicited the said Laura Herrington (659) to have unlawful and felonious sexual intercourse with him at the shop of J. P. Rose on the evening of February 15, 1916, and thereafter made no arrangement, nor attempted to make any arrangement with the said J. P. Rose for the use of said shop for said unlawful and felonious purpose, and entirely abandoned said arrangement with Laura Herrington, then you should acquit the defendant of the charge contained in the second count of the indictment (660).

XXXVII.

The court erred in refusing to grant a new trial to defendant upon his motion duly made therefor.

XXXVIII.

The court erred in refusing to grant defendant's motion in arrest of judgment.

XXXIX.

The court erred in pronouncing judgment and sentence upon the defendant.

Wherefore, the said defendant and plaintiff in error prays that the judgment of the said District Court for the Fourth Division of the Territory of Alaska be reversed and that said District Court be directed to dismiss the indictment in said cause or to grant a new trial of said cause.

T. A. MARQUAM,

BION A. DODGE,

Attorneys for Defendant and Plaintiff in Error.

ARGUMENT.

POINTS AND AUTHORITIES.

I.

The first assignment of error is for overruling objection to the introduction of any testimony whatever under the second count of the indictment, for the reason and upon the grounds that the statement of facts set forth therein do not constitute a crime. A discussion of this assignment of error involves many sections of the Compiled Laws of Alaska, 1913.

(a) Section 1894, to which Section 2073 is so closely related in this case, was taken from the revised statute of Ohio, and as this statute is different from the Oregon statute on the subject of rape, it therefore follows that the form of the indictment prescribed by the Oregon statute and enacted into law by the Alaska code, is not applicable to the Ohio statute, which is the Alaska statute.

Nebraska has a similar statute. The Ohio statute is as follows:

“Whoever has carnal knowledge of a female person, forcibly and against her will or, being eighteen years of age, carnally knows and abuses a female person under sixteen years of age, with her consent, is guilty of Rape.”

The Alaska statute is as follows: “That whoever has carnal knowledge of a female person forcibly and against her will, or, being sixteen years of age, carnally knows and abuses, a female person under sixteen years of age, with her consent, is guilty of Rape.”

The Oregon statute is as follows: “If any person over the age of sixteen years shall carnally know any female child under the age of sixteen years, or any person shall forcibly ravish any female, such person shall be deemed guilty of Rape.”

The Nebraska statute is as follows: “Or if any male person of the age of eighteen years or upwards, shall carnally know or abuse any female child under the age of eighteen years, with her consent, unless such female child so known and abused is over fifteen years of age and previously unchaste shall be deemed guilty of Rape.”

Bates Annotated Statutes of Ohio, Sec. 6816.

Lord's Oregon Laws, Sec. 1912.

State v. Carl, 71 Ohio St. 259.

Hubert v. State (Neb.), 104 N. W. 276.

Hall v. State (Neb.), 58 N. W. 929.

Morgan v. State, 50 S. W. 718.

State v. Wheat, 22 Atl. 720.

State v. Horne (Ore.), 26 Pac. 665.

Bishop's Statutory Crimes, Sec. 495.

Revised Statutes of Nebraska, Sec. 8588.

(b) The Alaska code provides "that the manner of stating the act constituting the crime as set forth hereinafter is sufficient in all cases where the forms there given are applicable, and in other cases forms may be used as nearly similar as the nature of the case will permit."

Now as these forms given are applicable to the Oregon statute on this subject and not to the Alaska and Ohio statutes, the form of indictment used should be that which governs the Ohio statute.

Secs. 1894, 2073, 2149, Comp. Laws of Alaska, 1913.

Bates Annotated Statutes of Ohio, Sec. 6816.

No. 170093, Vol. 15, Enc. of Forms, 570.

State v. Hensley, 75 Ohio St., 261.

State v. Lawrence, 74 Ohio St., 38.

State v. Carl, 71 Ohio St., 259.

(c) Furthermore, the common law is applicable to Alaska.

Secs. 796, 2099, Comp. Laws of Alaska, 1913.

(d) The Alaska statute contains both the common-law definition of rape and creates a new offense called statutory rape, which latter offense being in derogation of the common law, must be construed strictly. Where a statute prescribing a pen-

alty is susceptible of two constructions, that construction which is most favorable to defendant must be given by the court.

Title XIV, Criminal Code of Alaska in Comp. Laws of Alaska, 1913.

U. S. v. Doo-noch-keen, 2 Alaska Rep. 624.

(e) Now under the laws of Alaska the indictment may be set aside (1) on motion; (2) by demurrer; (3) by objections at time of trial; and (4) motion in arrest of judgment. And while in this case neither of the first two courses were pursued, objections to the introduction of evidence was duly made at the time of the trial on the grounds that the facts stated in the indictment did not constitute a crime, and after the verdict of guilty a motion in arrest of judgment was duly made, both of which were overruled by the court and exceptions taken.

Secs. 2191, 2197 and 2207, Comp. Laws of Alaska, 1913.

(f) In criminal pleadings, such as indictments setting forth a statutory crime, the courts generally hold that they must be technically exact, so that the defendant may be duly informed of the sort of proof he will have to meet.

Bishop's New Criminal Procedure, Vol. 2, p. 612.

People v. Maxon, 10 N. Y. Supp. 593.

Lehman v. People, 49 Am. Dec. 340.

State v. Skillman, 128 S. W. 729.

Alexander v. State. 127 S. W. 189.
Crasman v. State, 129 S. W. 1129.
Hall v. State (Neb), 58 N. W. 929.
Reinoehl v. State (Neb.), 87 N. W. 355.
George v. State (Neb.), 85 N. W. 84.
Farrel v. State (N. J.), 27 Atl. 723.
Pratt v. State, 23 Ohio St. 514.
Hagen v. State, 35 Ohio St. 268.
3 Cyc. 1444.

(g) The indictment charging the crime alleged in this case must charge facts amounting to an actual beginning of the consummation of the crime or offense. Mere intention to commit the offense, and solicitation and preparation for its commission are not sufficient. Some overt act must be done toward its commission after the preparations are all made.

12 Cyc. 177-183.
O'Nealy v. State, 17 Ohio St. 516-518.
Smith v. State, 12 Ohio St. 466.
Bishop's New Criminal Procedure, Vol. 3,
Secs. 71, 81, 82.
State v. Frazier, 36 Pac. 58.
State v. Williams, 41 Tex. 98.
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Robinson v. State, 44 S. E. 814.
People v. Everett, 101 Pac. 528.
State v. Landers, 42 L. R. A. (N. S.), 424.
U. S. v. Williams (Ore.), 2 Fed. 61.

State v. Taylor (Ore.), 84 Pac. 82.

State v. Douglas, 42 L. R. A. (N. S.), 524.

Wharton's Criminal Law, Vol. 1, 268-280.
280.

33 Cyc. 1431, and note.

II.

Assignment of errors II, III and IV should be sustained, for the reason that while testimony of the mere voluntary complaint *only* of the prosecutrix on a charge of rape may be admitted if made right after the alleged outrage, the details and the name of the person accused should be excluded.

State v. Hoskinson, 96 Pac. 138.

People v. Wilmot, 72 Pac. 838.

State v. Birchard, 59 Pac. 468.

State v. Oswalt, 82 Pac. 586.

State v. Griffin, 86 Pac. 954.

Rogers v. State, 41 L. R. A. (N. S.), 886.

Wigmore on Evidence, Secs. 1134 and 1135.

Greenleaf on Evidence (16 Ed.). Vol. 1, Secs. 162*h* and 469*c*; Vol. 3, Sec. 213.

Wharton's Criminal Law, Sec. 746.

III.

The fifth assignment of error is well taken, because the conclusions of the witness George Berg as to what was said and done in Rose's shop on the evening of February 15, 1916, should not be allowed to stand against this plaintiff in error, Wooldridge.

17 Cyc. 25.

Wigmore on Evidence, Sec. 657.

Greenleaf on Evidence (16 Ed.), Vol. 1, Sec. 441*b*.

IV.

The testimony set forth and referred to in the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth assignments of error is clearly hearsay, incompetent, immaterial and irrelevant, and was in the absence of the defendant.

State v. Hoskinson (Kan.), 96 Pac. 140.
33 Cyc. 1467, 1468.

Greenleaf on Evidence (16 Ed.), Vol. 1, Secs. 98, 99.

Wigmore on Evidence, Secs. 1360, 1420.

V.

The testimony of the grand jurors described in Assignment of Error XIII was produced and permitted for the purpose of impeaching J. P. Rose, the Government's own witness, but the proper foundation had not been laid.

40 Cyc. 2559-60, 2691, 2740.

Greenleaf on Evidence (16 Ed.), Vol. 1, Sec. 252.

VI.

It was evident error, as set forth in the fourteenth assignment of error, for the court below to permit the introduction in evidence of the alleged written and signed statement of the witness J. P. Rose, marked Plaintiff's Exhibit 1, for the purpose of impeaching Rose, for the reasons that Rose was the prosecution's own witness, no proper foundation was laid to impeach him, and the witness Rose

was not permitted to read over and inspect said written and signed statement, but he was questioned generally and specifically on wholly the same. Nor was defendant's counsel permitted to inspect said statement before said witness testified, as is required and provided by law.

Secs. 1501, 1502 and 1504, Comp. Laws of Alaska, 1913.

Greenleaf on Evidence (16 Ed.), Vol. 1, Secs. 442 and 463.

VII.

The questions to and the answers of the prosecuting witness, Laura Herrington, referred to in the fifteenth assignment of error, were clearly inadmissible and should have been stricken from the record, for the reasons that they were so arrogantly leading and suggestive and were not proper in re-direct examination, and the court erred in granting permission to ask such questions as part of the direct examination, since the same had been fully covered in the original direct examination.

State v. Ogden (Ore.), 65 Pac. 449.

Nurnberger v. U. S., 166 Fed. 721.

Henry v. Sioux City P. R. Co. (Iowa), 23 N. W. 260.

Greenleaf on Evidence (16 Ed.), Vol. 1, Sec. 434.

VIII.

The second fifteenth assignment of errors is well taken, for the reason that a proper foundation of such impeachment had been laid, as it appeared

that the impeaching witness was about to speak concerning the same conversation to which the attention of the principal witness, Exena Herrington, had been called on her cross-examination.

40 Cyc. 2740.

Lawler v. McPheeters, 73 Ind. 577.

50 Century Digest, Par. 1247.

IX.

An indictment is a public record and as such subject to inspection. The accused was entitled to any evidence that would explain or throw any light upon the testimony of the witness Rose, his motive, purpose, etc. It was apparent that Rose testified under a severe and mental strain. Under duress he made certain statements to the U. S. deputy marshals quite contradictory to the actual facts. The nature of the duress was apparent from the fact that five deputy marshals were hovering over him in the marshal's office at the time, and subsequently a secret indictment was found against him, charging him with the statutory offense of rape. At the time of his making the statement concerning the Wooldridge affair it is a fair inference that the charge against him was held over him. When he was on the stand his manhood prompted him to tell the truth and exonerate Wooldridge, whereupon he was confronted with the statement theretofore made and impeached, which impeachment and the written statement had such an effect upon the minds of the jury as to result in a verdict of guilty

upon the second count in the indictment. If Rose had been indicted on March 2, as is claimed and the records both in the court at Fairbanks and in this court show, and a bench warrant for his arrest had been ordered by the court, there was certainly no excuse why the same should not have been served, except for the purpose of holding the same secret and as a threat over the witness Rose until after the trial of this case.

Sections 1871 and 2140, Comp. Laws Alaska, 1913.

17 Cyc. 457.

X.

The motions for directed verdicts of not guilty upon the second count in the indictment set forth in the seventeenth and nineteenth assignments of error should have been sustained, for the reasons that there were no overt acts done toward the commission of the crime charged, as according to the prosecution's own witnesses there was at the most only solicitation and preparation, which are entirely insufficient.

33 Cyc. 1431, and note.

State v. Taylor (Ore.), 84 Pac. 82.

Other authorities cited under subdivision (g) of paragraph I hereof.

XI.

The prosecution should have elected upon which count in said indictment it would stand and have

a verdict found as claimed by plaintiff in error in Assignment of Error XVIII.

Abbott's Trial Brief (Crim.), 295.

Bishop's New Criminal Procedure, Vol. 1,
Secs. 374, 384, 459, 461.

XII.

Instructions numbered 1, 2, 3, 4, 6, 7, 8, 10 and 11, requested by said defendant Wooldridge in the lower court, as set out in Assignments of Error XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII and XXVIII, should have been given by the court.

12 Cyc. 633-637.

33 Cyc. 1485.

Section 1501, Comp. Laws Alaska, 1913.

State v. Taylor (Ore.), 84 Pac. 83.

State v. Hoskinson, 96 Pac. 138.

State v. Apley, 48 L. R. A. (N. S.), 269 and
note.

State v. Roderick (Ohio), 14 L. R. A. (N. S.),
715.

Stockslager v. U. S., 116 Fed. 599.

Hughes, Instructions to Juries, Secs. 713-715.

XIII.

As to Assignment of Error XXIX, the court surely erred in giving Instruction No. 12 to the jury without directing the jury's attention to the particular evidence referred to and to the particularly specified and limited purpose for which it was so admitted, and the court should have instructed the jury that all the evidence of the witness J. H. Miller

with reference to any conversation upon the part of Laura Herrington was hearsay evidence, incompetent for any purpose and withdrawn from the jury.

12 Cyc. 631.

State v. Miller (Iowa), 46 N. W. 751.

XIV.

Instructions numbered 15 and 26, as set out in Assignments of Error XXX and XXXIV, given to the jury by the court and relating to corroborating evidence, did not state the law correctly or completely and should not have been so given.

Henderson v. State (Neb.), 26 L. R. A. (N. S.), 1149.

Note to *Ohio and Mississippi R. Co. v. Stein*, 19 L. R. A. 744.

XV.

The instructions of the court numbered 17 and 22, set forth in Assignments of Error XXXI and XXXIII, are not correct statements of the law involved and attempted to be covered and charged in said instructions, nor are the errors corrected or cured by any correct instructions given elsewhere in the case.

Hughes, Instructions to Juries, Secs. 730-732.

XVI.

The thirty-second assignment of error is to the eighteenth instruction of the court, wherein the court singled the defendant out from all the other

witnesses in the case and laid special stress on the question of his interest on the result of the trial, when as a matter of fact and law somewhat similar instructions should apply to all witnesses in the case if the jury believe they had any interest in the result of the trial, and such instructions should have been given as particularly applicable in this case, where it was shown so conclusively by the prosecution's own witnesses that the marshal and United States attorney, their deputies and agents, were all interested in the outcome of the trap they had conspired and laid together, and so were interested in the result of the trial. The eighteenth instruction should have been given with the tenth instruction.

12 Cyc. 636-638.

Argabright v. State (Neb.), 69 N. W. 102.

XVII.

Instruction 28 given to the jury by the court, as set forth in Assignment of Error XXXV, was incomplete, misleading and an incorrect statement of the law upon the question of intent and the necessary proof required to prove such intent upon the part of the said defendant. Also the said Woolbridge could and did testify to his own intent.

Bishop on Criminal Law, Sec. 759.

Roberts v. The People, 19 Mich. 401.

Sackett's Instruction to Juries, 488.

Wigmore on Evidence, Sec. 581.

Brown v. Hickie (Iowa), 27 N. W. 276.

12 Cyc. 403.

XVIII.

Assignments of Error XXXVI, XXXVII, XXXVIII and XXXIX are all well founded, XXXVI for the reason that Instruction 32 of the court to the jury is involved, contradictory in itself, misleading, not applicable to the issues presented by the indictment or the evidence in the case, that it is not the law of the case from any standpoint, and the hypothesis upon which it is based fails to collate all the material elements of the charge as a basis for the conclusion of the court.

And Assignments of Error XXXVII, XXXVIII and XXXIX for the reasons set forth in said motion for a new trial and motion in arrest of judgment, and particularly because of (1) the facts stated in the second count of said indictment do not constitute a crime, as is fully argued under Paragraph I of this argument; (2) irregularities in the proceedings of the court and abuse of discretion exercised by the court by which defendant was prevented from having a fair trial, in improperly excusing the jurors J. E. Getrall and A. J. Painter, members of the regular panel, from service on the jury in this case after they had properly qualified as such jurors and during the trial the court corrected counsel for defendant when said counsel referred to the prosecutrix as a woman and the court stated in substance "you mean this child" when the authorities hold that it is at the age of puberty and not at majority where the female ceases to be a child; (3) insufficiency of the evidence to jus-

tify said verdict of guilty, there having been no overt act done, shown or testified to having been done toward the commission of the crime and solicitation and preparation are entirely insufficient, even if admitted, which they are not. The indictment charges that the alleged crime was committed on February 14, while the evidence shows that if any offense whatever was committed it was on February 15; (4) admission of details and name of party accused in testimony of Laura Herrington, Ed Hall and Catherine Herrington in connection with complaint; (5) admission of hearsay evidence in the absence of defendant when the scheme was being worked out to lay a trap for Wooldridge, and particularly the testimony of the deputy marshals, Miller, Berg, McMullen and Hall, and witnesses J. P. Rose and Laura Herrington as to what was said and done by them and each of them in the United States attorney's office, in the marshal's office and elsewhere, relative to the offense charged to have been committed.

12 Cyc. 176-183, 631.

State v. Wise (Iowa), 50 N. W. 59.

State v. Taylor (Ore.), 84 Pac. 83.

33 Cyc. 1431, 1467-1468.

State v. Hoskinson (Kan.), 96 Pac. 138.

State v. Griffin (Wash.), 86 Pac. 951.

State v. Frazier (Kan.), 36 Pac. 58.

State v. Russell (Kan.), 68 Pac. 615.

U. S. v. Doo-noch-keen, 2 Alaska Rep. 624.

O'Nealy v. State, 17 Ohio St. 516-518.

Blackburn v. State, 22 Ohio St. 102.

Wigmore on Evidence, Secs. 1134, 1135, 1360, 1420.

Secs. 1501, 1502 and 1504, 2207, Comp. Laws of Alaska, 1913.

Wharton's Criminal Law, Vol. 1, 268-280.

Bishop's New Criminal Procedure, Vol. 3, Secs. 71, 81, 82.

CONCLUSIONS.

We therefore submit that the District Court was in error in excusing the jurors J. E. Gatrell and A. J. Painter, members of the regular panel, after they had qualified to serve in this case.

That the Alaska statute against rape having been borrowed directly from the Ohio statute on rape, which is different from the Oregon statute on that offense, it therefore follows that the forms of indictment prescribed by the Oregon statute and enacted into law by Congress for Alaska, are not applicable.

That the second count of the indictment does not contain a statement of facts sufficient to constitute the offense of an attempt to commit the crime of rape charged therein against the plaintiff in error.

The facts amounting to an actual beginning of the consummation of the crime should have been charged in the indictment, which was not done.

That charging facts showing intention to commit the offense and solicitation and preparation for its commission are not sufficient as some overt

act done toward its commision after all preparations have been made, must be charged in the indictment, and no such acts were so charged in the second count of this indictment.

That the defendant's objections to the introduction of any testimony whatever under the second count of this indictment should have been sustained.

That permitting the witness Laura Herrington, Ed Hall, and Catherine Herrington to testify as to the details and the person accused when the prosecutrix made complaint is plainly reversible error.

That the clearly hearsay, incompetent, immaterial and irrelevant testimony of J. H. Miller, George Berg, P. McMullen, Frank Hall, J. P. Rose, and Laura Herrington as to what was said and done in the United States attorney's office, in the marshal's office, and elsewhere, all in the absence of defendant, should have been excluded, and it was reversible error for the court to admit the same, so prejudicial to the defendant.

That the lower court committed reversible error in permitting the government's counsel to examine the witness Rose as he did upon the alleged written statement of Rose introduced as Plaintiff's Exhibit 1, for the purpose of impeaching his own witness and without permitting the witness Rose or the defendant's counsel to inspect said written and signed statement until after the conclusion of the direct examination of said witness when it was intro-

duced in evidence and read to the jury to the great prejudice of defendant.

That the predudicial rulings of the court prevented the defendant from having a fair and impartial trial.

That there was no testimony whatever showing that there was any overt act or any acts on the part of Wooldridge toward making an attempt to commit the crime of rape upon the person of Laura Herrington.

That there is not a scintilla of evidence to show that defendant took or attempted to take the key of the front door of Rose's repair shop alleged to have been hanging on the wall.

That there is not an iota of evidence that defendant touched the prosecutrix or even made an attempt to touch her.

That there is no evidence whatever showing that the defendant said anything to the prosecutrix at the repair shop about having sexual intercourse with her.

That defendant left Rose's repair shop as soon as the prosecutrix came in.

That even if all the testimony of the prosecutrix be admitted to be true, which it is not, there was nothing more than solicitation and preparation shown, all of which is absolutely insufficient.

That the defendant's motions for directed verdicts at the close of the prosecution's case in chief and after all the evidence was in, should have been sustained, particularly as to the second count of

the indictment, for it was plainly evident that the evidence was insufficient.

That the defendant's motion for a new trial should have been granted for the many well founded grounds and reasons therein stated.

That defendant's motion in arrest of judgment should have been granted for the reason that the facts stated in the said second count of the indictment were not sufficient to constitute a crime even if proven.

That finally, not only in justice to this defendant and plaintiff in error, but also that the people of the territory of Alaska may be assured and guaranteed that the courts so established by the National Government and the only courts they have shall give to them fair and impartial trials, such as they are entitled to under the Constitution, this Federal judgment should be reversed and this indictment dismissed or a new trial of said cause granted.

Respectfully submitted,

JAMES J. CROSSLEY,

BION A. DODGE, and

T. A. MARQUAM,

Attorneys for Plaintiff in Error.

No. 2842

4

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

HARRY CANNON AND WALTER D.
STOREY,

Respondents.

Transcript of Record

Upon Appeal from the United States District
Court for the District of Montana

Filed

MAY 14 1906

F. D. Munckton,
Clerk

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

VS.

HARRY CANNON AND WALTER D.
STOREY,

Respondents.

Transcript of Record

Upon Appeal from the United States District
Court for the District of Montana

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Names and Addresses of the Solicitors of Record:

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Solicitors for Plaintiff and Appellant.

Hon. C. L. HARRIS, of Billings, Montana,

Hon. W. M. JOHNSTON, of Billings, Montana,

Hon. H. J. COLEMAN, of Billings, Montana,

Solicitors for Defendants and Appellees.

*In the District Court of the United States, in and for the
District of Montana.*

IN EQUITY—No. 53.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON AND WALTER D.
STOREY,

Defendants.

BE IT REMEMBERED that on April 16, 1915,
plaintiff filed its Bill of Complaint herein in the words
and figures following, to-wit:—

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON AND WALTER D.
STOREY,

Defendants.

BILL OF COMPLAINT.

To the Honorable District Court of the United States,
in and for the District of Montana:

The United States of America by the Attorney General of the United States and Burton K. Wheeler, United States Attorney for the district of Montana, brings this bill of complaint against Harry Cannon, a resident of the state and district of Colorado, and Walter D. Storey, a resident of the state and district of Montana, defendants herein, and thereupon your orator complains and says:

I.

That on and prior to the 1st day of May, 1909, your orator was the owner in fee of those certain public lands situate in the state and district of Montana and within the Billings land district, and more particularly described as follows, to-wit: The west half of the northwest quarter (W/2 NW/4), the northeast quarter of the northwest quarter (NE/4 NW/4) and the northwest quarter of the northeast quarter (NW/4 NE/4) of section twenty-four (24), township two (2)

south, range twenty-two (22) east of Montana principal meridian, containing one hundred sixty (160) acres of land, situate, lying and being in the county of Stillwater, in the state and district of Montana, and within the jurisdiction of this court.

II.

That one Harry Cannon on the said 1st day of May, 1909, under and by virtue of the provisions of section 2289 Revised Statutes of the United States, made and filed in the local land office of the United States at Billings, in the state and district of Montana, his written application and affidavit No. 02429, under oath, to enter as a homestead the lands hereinbefore described, which said application and affidavit was, on the said 1st day of May, 1909, and before the filing of the same in said land office, signed, subscribed and sworn to by the said Harry Cannon before W. M. Enright, the Receiver of said United States land office at Billings, Montana.

III.

That the said Harry Cannon in his said application and affidavit No. 02429, so made, signed, subscribed and sworn to as aforesaid, among other matters and things, stated and deposed that his said application to enter said lands as a homestead was honestly and in good faith made for the purpose of actual settlement upon and cultivation of said lands; that he would faithfully and honestly endeavor to comply with all of the requirements of law as to settlement, residence and cultivation necessary to acquire title to said lands, and

that he did not apply to enter the same for speculation but in good faith to obtain a home for himself; that thereupon the said Harry Cannon then and there paid the Receiver of said local land office of the United States at Billings, Montana, the sum of twenty-two dollars, the same being the proper and legal fee then and there due and payable to said Receiver upon the filing of said application and affidavit aforesaid, and the said Register and Receiver of said United States land office, relying upon and believing the statements of the said Harry Cannon contained in said homestead application and affidavit to be true, received, accepted and filed the said homestead application and affidavit of the said Harry Cannon, and received and accepted the said fee for the filing of said application and affidavit; and that thereafter and on the 1st day of May, 1909, and upon such payment having been made as aforesaid, a receipt was then and there issued and delivered by the said Receiver of the said Billings land office to the said Harry Cannon for said amount of money so paid by him as aforesaid.

IV.

And your orator further sheweth unto your Honor that the said acceptance of the said homestead application and affidavit of the said Harry Cannon by the said Register and Receiver as aforesaid, and the acceptance and receipt by said Receiver of said fee for the filing of said homestead application and affidavit as aforesaid, and the issuance of said receipt therefor by said Receiver as aforesaid, were had and done by

the officers of said land office in reliance by them, and each of them, upon the truth of the statements set forth and contained in the aforesaid homestead application and affidavit of the said Harry Cannon, and in reliance by them, and each of them, upon the good faith of the said Harry Cannon in the premises, and not otherwise.

V.

That said homestead application and affidavit of the said Harry Cannon was then and there false, fraudulent and untrue in this, to-wit: that said application to enter said lands as a homestead was not honestly and in good faith made for the purpose of actual settlement and residence upon and cultivation of said lands by the said Harry Cannon, and that said Harry Cannon did not intend, at the time of making and filing said homestead application and affidavit, to comply with all of the requirements of law as to settlement, residence and cultivation necessary to acquire title to said lands, and that the said Harry Cannon did not apply to enter said lands in good faith to obtain a home for himself, but that said application to enter said lands was made by the said Harry Cannon with the intent of fraudulently acquiring title to said lands under the homestead laws of the United States without either settlement or residence upon or cultivation thereof by the said Harry Cannon, *speculation and not for the purpose of* for the purpose of obtaining a home for himself, and that the statements contained in said homestead application and affidavit of the said Harry Cannon were false, fraudulent and untrue as hereinbefore set forth, and the same were made and filed for the false and

fraudulent purpose of imposing upon and deceiving the Register and Receiver of the said United States land office at Billings, Montana, and to cause and induce the officers of your orator to believe the statements contained in said affidavit were true, and that the said defendant, Harry Cannon, was making said homestead application and entry in good faith for the purpose of actual settlement and residence upon and cultivation of said lands and in good faith to obtain a home for himself and not for speculation, and for the false and fraudulent purpose of inducing said officers, by means of the fraud and deceit hereinbefore specifically set forth, to accept said homestead application and entry and file the same.

VI.

That thereupon, in order to entitle the said Harry Cannon to obtain and procure from the said United States a patent for said tract of land under the homestead laws of the United States, it was incumbent upon him, and he was required, to make actual settlement upon said lands and reside thereon and cultivate the same for a period of five years from and after the time of the filing in said local land office at Billings, Montana, of his application and affidavit hereinbefore set forth, or in case he did not desire to remain upon said lands the full period of five years, to make payment for said lands at any time after the expiration of fourteen calendar months from and after the filing of said application and affidavit as aforesaid at the rate of one dollar and twenty-five cents per acre and make proper

and satisfactory proof before the Register and Receiver of the said local land office of the United States at Billings, Montana, of settlement and residence upon and cultivation of said lands by the said Harry Cannon from the date of the filing of said application and affidavit down to the time of making of such proof and payment; that for the purpose of availing himself of the privileges afforded by section 2301 of the Revised Statutes of the United States and the acts amendatory thereof and supplemental thereto and after the expiration of fourteen calendar months from and after the filing by him of said application and affidavit, on or about the 1st day of May, 1909, as aforesaid, the said Harry Cannon on the 24th day of January, 1911, appeared with his final proof witnesses, Albert E. Buster and Chester A. Roberts, before W. M. Enright, Receiver of the United States land office at Billings, Montana, said land office then and there being the proper United States land office of the land district wherein said lands were situated, and offered proof before the said W. M. Enright, Receiver of said United States land as aforesaid, that he had settled upon said lands and premises and actually resided thereon and cultivated the same as required by law and within the meaning and intent of the said homestead laws of the United States, and then and there gave, made out and signed his deposition and affidavit and swore to the same before the said W. M. Enright, Receiver of said United States land office as aforesaid, and the said Harry Cannon on or about the 24th day of January,

1911, filed and caused to be filed said affidavit, deposition and sworn statement so made, signed and sworn to by the said Harry Cannon, to and with the Register and Receiver of the United States land office as proof of the settlement and residence upon and the cultivation of the said lands and premises by the said Harry Cannon as required by law and the statutes in such case made and provided, and the same were accepted by the said Register and Receiver of said land office.

VII.

And your orator sheweth unto your Honor that the said said Harry Cannon in said affidavit, deposition and sworn statement so made, signed and sworn to by him as aforesaid, and offered, presented, delivered and filed with the said Register and Receiver and accepted by them as proof of the settlement and residence of the said Harry Cannon upon the said lands and the cultivation of the same by the said Harry Cannon, among other matters and things, testified and deposed that he had established his actual residence upon said lands during the month of May, 1909, and had resided on said lands continuously since the month of May, 1909, and that the said Harry Cannon had never been absent from said lands since the said Harry Cannon had established his residence thereon in the month of May, 1909, except for a period of two (2) weeks in December, 1910; and that he had placed improvements on said lands consisting of a log house, barn, ^{corral} ~~canal~~ and fencing and had cultivated between ten and twelve acres of said lands;

and the said Harry Cannon procured from each of his said final proof witnesses, Albert E. Buster and Chester A. Roberts, affidavits and depositions and sworn statements taken before the said W. M. Enright, Receiver of said land office as aforesaid, made, signed and sworn to by the said final proof witnesses before the said Receiver as aforesaid, to the same effect and corroborative and in aid of the said affidavit, deposition and sworn statement, made, signed and sworn to by the said Harry Cannon and filed the same, together with the said Harry Cannon's own affidavit, deposition and sworn statement, in the local land office of the United States at Billings, Montana, and offered, presented and delivered the same to the said Register and Receiver of said land office, together with his own affidavit, deposition and sworn statement, as proof of the settlement and residence upon and cultivation of said lands by the said Harry Cannon as required by law, and all of the said affidavits, depositions and sworn statements of the said Harry Cannon, and his said final proof witnesses, so made, signed and sworn to as aforesaid, and offered, presented and delivered to the said Register and Receiver of said land office as aforesaid, were, and each of them was, then and there taken and accepted by the said Register and Receiver of said land office as proof of the settlement and residence of the said Harry Cannon upon said lands and premises, and the cultivation thereof by the said Harry Cannon.

VIII.

That on the 24th day of January, 1911, on the pres-

entation and delivery to the Register and Receiver of the said land office by the said Harry Cannon of his said affidavit, deposition and sworn statement, and the affidavits, depositions and sworn statements of his said final proof witnesses, and after the acceptance thereof by the said Register and Receiver of the said land office as aforesaid, the said Register of the said land office at Billings, Montana, then and there issued to the said Harry Cannon his certificate for said lands, certifying that in pursuance of law the said Harry Cannon had made payment in full for said lands, and upon presentation of said certificate to the Commissioner of the General Land Office, said Harry Cannon should be entitled to receive a patent for said lands hereinbefore more particularly mentioned and described; and that thereafter such proceedings were had that on the 26th day of June, 1911, a patent was issued by the United States to the said Harry Cannon for said lands, which patent was duly delivered to the said Harry Cannon and received by him.

IX.

And your orator further sheweth unto your Honor that the said acceptance of the said affidavits, depositions and testimony of the said Harry Cannon and of his said final proof witnesses, Albert E. Buster and Chester A. Roberts, as proof of the settlement and residence of the said Harry Cannon upon said lands and the cultivation of the same by him as required by law, by the said Register and Receiver, and the issuance of the said certificate of purchase by the said Register as

hereinbefore mentioned and set forth, and the issuance of the said patent for said tract of land by the United States, were had and done by the officers of the said land office and the officers of the United States in reliance by them, and each of them, upon the truth of the testimony and statements contained in the affidavits and depositions of the said Harry Cannon and in reliance by them, and each of them, upon the truth of the testimony and statements contained in the affidavits and depositions of the said final proof witnesses, and in reliance upon the good faith of the said Harry Cannon and his said final proof witnesses in the premises, and not otherwise.

X.

That the said affidavit and deposition of the said Harry Cannon and the said affidavits and depositions of the said final proof witnesses, Albert E. Buster and Chester A. Roberts, were, and each of them, was, then and there false, fraudulent and untrue, as was then and there well known to the said Harry Cannon and to each of his said final proof witnesses, and was made with intent to deceive the officers of the United States and with intent to fraudulently obtain patent to said lands hereinbefore described, and by fraud and deceit to procure a patent for said lands and premises by means of the false and fraudulent testimony and statements made and contained in the said affidavits, depositions and testimony in this, to-wit: that the said Harry Cannon had not and did not establish his residence upon said lands, or any portion thereof, during the

month of May, 1909, or at any other time, or at all; that the said Harry Cannon had not at the time of making his said final proof and the filing of the same in the said land office, resided on said lands or any part or portion thereof continuously, or in any other manner or at all, since the month of May, 1909, or at any other time; that the said Harry Cannon had not made at the time of making his said final proof and the filing of the same in said land office, or at any other time, or at all, any improvements of any kind whatever upon said lands, or upon any part thereof, and had not cultivated between ten and twelve acres of said lands or any part or portion thereof whatever; and your orator alleges the fact to be that the said Harry Cannon never did make settlement upon said lands, or on any part or portion thereof; and never did establish his actual residence upon said lands, or upon any part or portion thereof; and never did reside upon said lands continuously, or in any other manner or at all, at any time, and never did have at any time or at all a house, barn, corrals, fencing, or any other buildings or improvements of any kind whatever upon said lands, or upon any part or portion thereof, and never did cultivate any part or portion of said lands whatever; and that each and every of the statements so made by the said Harry Cannon and his said final proof witnesses, as hereinbefore mentioned and set forth and which are contained in the said affidavits, depositions and testimony to prove the settlement and residence by the said Harry Cannon upon said lands and improvements and

cultivation thereof required by the homestead laws of the United States, were utterly false, fraudulent and untrue in every particular, as he, the said Harry Cannon then and there well knew.

XI.

And your orator further sheweth unto your Honor that the said Harry Cannon, by means of said false and fraudulent depositions and the false and fraudulent statements and testimony therein contained, given under the sanction and oath of the said Harry Cannon and his final proof witnesses, imposed upon and deceived the said officers and agents of the United States and caused and induced the said officers to believe that the testimony and statements contained in said depositions were true and that the said Harry Cannon had actually settled and resided upon said lands and improved and cultivated the same in the manner and to the extent as stated in said depositions, and that the said officers of the United States, supposing and believing the said testimony and statements contained in said depositions of the said Harry Cannon and his final proof witnesses to be true, and relying upon the truth of the said testimony and statements so falsely and fraudulently given and made by the said Harry Cannon and his final proof witnesses as aforesaid, and believing and supposing on the strength of said depositions and testimony that the said Harry Cannon had actually made settlement and resided upon said lands and made improvements thereon and cultivated the same in the manner and for and during the

period of time as therein stated by him, the said Harry Cannon and his final proof witnesses, were wholly deceived and misled into allowing said final proof to be filed and accepted and in permitting the issuance of said certificate of purchase of said lands and the United States patent therefor by the said officers of the United States, as hereinbefore set forth, and delivering the said patent to the said Harry Cannon.

XII.

And your orator further showeth unto your Honor that since the issuance of said certificate and patent for said lands to the said Harry Cannon as aforesaid, the said Harry Cannon has heretofore, to-wit: on the 5th day of August, 1912, conveyed and deeded the said lands to the said Walter D. Storey, and that the said Walter D. Storey is now in occupancy, possession and enjoyment of the said lands and premises, but your orator alleges that by whatever pretended right or title the said Walter D. Storey now holds possession of or occupies said lands, the same is wholly void and ineffectual as against the rights of your orator; that the existence of said patent so fraudulently obtained and procured by the said Harry Cannon as hereinbefore set forth on its face entitled the said Harry Cannon and those claiming under him to exercise the right of absolute ownership on and over the said lands and assert a legal title to the same, to which the defendants are not entitled; that if the said patent remains uncanceled and in force, the same may be used in fraud of your orator and all persons relying thereon

as a valid and substantial conveyance of the legal title to said lands and premises.

XIII.

And your orator further avers and charges that the said Walter D. Storey was not a purchaser in good faith and for a valid consideration of the lands hereinbefore described, but if he purchased the same at all purchased the same with full and complete notice and knowledge that said lands were entered in fraud and that patent thereto was fraudulently obtained by the said defendant Harry Cannon and in violation of the laws of the United States and against the legal and equitable rights of the plaintiff, and that said pretended purchase is void and should be so decreed in equity in favor of this plaintiff and against the said Walter D. Storey.

All of which actions, doings and pretenses of the defendants are contrary to equity and good conscience and done to the manifest injury and oppression of the plaintiff in the premises.

IN CONSIDERATION WHEREOF, and for as much as the plaintiff is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable; and

TO THE END, THEREFORE, that the said defendants, Harry Cannon and Walter D. Storey, make full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, but not under (an answer under oath be-

ing hereby expressly waived), as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated; and to the end that the said defendants and all and singular their agents, employees and servants may be forthwith and forever restrained and enjoined from setting up and asserting or claiming any rights, privileges, benefits or advantages under and by reason of said patent, or said pretended deed of conveyance hereinbefore mentioned; and to the end that said patent so issued by the plaintiff to the said Harry Cannon may be declared void and cancelled; and that the said pretended deed of conveyance from the said Harry Cannon to the said Walter D. Storey may be by decree of this Honorable Court treated as a cloud upon the title of the plaintiff to all and singular the lands in paragraph one herein described, and the same removed as such; and that the legal and equitable title and the right of possession thereof in and to the lands hereinbefore and in this bill of complaint described, be restored and given to the plaintiff, and that the plaintiff have such other and further relief in the premises as the circumstances of this cause may require and as to this Honorable Court may seem meet and proper, and as is agreeable to equity and good conscience.

MAY IT PLEASE YOUR HONOR to grant unto the plaintiff a writ of subpoena to be directed to the said Harry Cannon and Walter D. Storey, thereby commanding them and each of them at a certain and place and under a certain penalty therein to be speci-

fied, personally to be and appear before this Honorable Court, and then and there to answer all and singular the premises, and to stand to and abide by such further order, direction or decree therein as to this Honorable Court may seem meet.

T. W. GREGORY,
Attorney General.

B. K. WHEELER,
United States Attorney,
District of Montana.

UNITED STATES OF AMERICA,
District of Montana—ss.

BURTON K. WHEELER, being first duly sworn, deposes and says that he is the duly and regularly appointed, qualified and acting United States Attorney for the district of Montana; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and facts therein stated are true to the best of his knowledge, information and belief.

BURTON K. WHEELER.

Subscribed and sworn to before me this 16th day of April, 1915.

GEO. W. SPROULE,
Clerk U. S. Dist. Court.

(SEAL)

By HARRY H. WALKER,
Deputy.

(Indorsed): Title of Court and Cause. Bill of Complaint. Filed April 16, 1915, Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy Clerk.

Thereafter, on the same day, a subpoena in equity was duly issued herein in the words and figures following, to-wit:

UNITED STATES OF AMERICA.

District Court of the United States, District of Montana.

IN EQUITY.

The President of the United States of America, Greeting: To Harry Cannon and Walter D. Storey, Defendants.

You are hereby commanded that you be and appear in said District Court of the United States aforesaid, at the Court Room in Federal Building, Helena, Montana, on the 6th day of May, 1915, to answer a Bill of Complaint exhibited against you in said Court by United States of America, Complainant, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under penalty of Five Thousand Dollars.

Witness the Honorable Geo. M. Bourquin, Judge of the District Court of the United States for the District of Montana, this 16th day of April, in the year of

our Lord one thousand nine hundred and fifteen, and of our Independence the 139.

GEO. W. SPROULE,
Clerk.

By HARRY H. WALKER,
Deputy Clerk.
(SEAL)

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

You are hereby required to file your answer or other defense in the Clerk's office of said court on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso.

GEO. W. SPROULE,
Clerk.

By HARRY H. WALKER,
Deputy Clerk.

T. W. GREGORY, U. S. Atty. Gen.,
B. K. WHEELER, U. S. Atty.,
Solicitors for Complainant, Butte, Montana.

UNITED STATES MARSHAL'S OFFICE, DIS-
TRICT OF MONTANA.

I hereby certify that I received the within writ on the 26th day of April, 1915, and personally served the same on the 27th day of April, 1915, by delivering to and leaving with Walter D. Storey, whose true name is Walter D. Storey, at his ranch 2 miles West of Park City, said defendant named therein personally at place

above stated in the county of Stillwater, in said district, a copy thereof, with a copy of the complaint attached.

WILLIAM LINDSAY,

U. S. Marshal.

By THAD C. POUND,

Deputy.

HELENA, April 30, 1915.

After diligent search and inquiry the therein named Harry Cannon could not be found in the District of Montana.

(Indorsed.) Title of Court and Cause. Subpeona. Filed April 30th, 1915, Geo. W. Sproule, Clerk, by C. R. Garlow, Deuty Clerk.

Thereafter and on May 3rd, 1915, the defendants filed their answer herein, as follows, to-wit:

ANSWER.

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

To the Honorable District Court of the United States,
in and for the District of Montana:

Comes now, Harry Cannon and Walter D. Storey,
and makes and files their answer to the bill of com-

plaint of plaintiff filed herein and admits, denies and alleges as follows:

1.

Admits the matter alleged in paragraph one of plaintiff's bill of complaint contained.

2.

Admits the matters alleged in paragraph two of plaintiff's bill of complaint contained.

3.

Admits the allegations alleged in paragraph three of plaintiff's bill of complaint contained, except that the defendants deny that Harry Cannon, among other things in said application contained, stated that he would "faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to said

4.

Admits the matters alleged in paragraph four of plaintiff's bill of complaint contained.

5.

Answering paragraph five of plaintiff's bill of complaint, the defendants deny each and every statement, allegation and thing contained and the whole thereof.

6.

Admits the matters and statements alleged in paragraph six of plaintiff's bill of complaint contained.
lands."

7.

Admits the matters and allegations in paragraph seven of plaintiff's bill of complaint contained.

8.

Admits the matters and allegations in paragraph eight as alleged in plaintiff's bill of complaint contained.

9.

Admits the matters and allegations in paragraph nine of plaintiff's bill of complaint contained.

10.

Denies each and every statement, matter and thing in paragraph ten of plaintiff's bill of complaint contained; and avers that Harry Cannon fully complied with the law and regulations in regard to his entry, both as to residence, cultivation, improvements and payment of money; that each and all and every one of the statements made to departments through the United States District Land Office, Billings, Montana, with reference to his entry was and is the truth; denies each and every allegation, matter and thing stated and alleged in paragraph ten of plaintiff's bill of complaint contained.

11.

Answering paragraph eleven, the defendants admit that the Register and Receiver of the United States Land Office at Billings, Montana, relied upon and believed statements made by Harry Cannon, as his witnesses concerning final proof referred to in plaintiff's bill of complaint; and denies that such statements were false and defendants re-asserts, re-affirms and re-alleges such statements to be true, otherwise defend-

ants deny each and every allegation, matter and thing in said paragraph contained.

12.

Answering paragraph twelve of plaintiff's bill of complaint, the defendants admit the transfer referred to thereof, to Walter D. Storey, on April 5th, 1912, and that he is the present owner of said land, and is in the occupancy and possession thereof; denies that the patent was obtained by fraud and denies that plaintiff was prejudiced or injured by such transfer.

13.

Answering paragraph thirteen of plaintiff's bill of complaint, the defendants deny that Walter D. Storey was not a purchaser in good faith for valuable consideration, and avers that Walter D. Storey purchased such land about a year after the final proof was accepted and payment thereof made, and avers that such purchase was made in good faith for a valuable consideration to-wit: the sum of One Thousand (\$1000.00) Dollars, in lawful money of the United States of America, in hand paid to Harry Cannon; denies that said land was purchased from said Harry Cannon with full and complete notice, or with any notice, knowledge or information whatever that said land was entered in fraud and that patent thereto was fraudulently obtained by said defendant, Harry Cannon, and in violation of the laws of the United States, and against the legal and equitable rights of the plaintiff; and denies that such land was so obtained, de-

nies that said pretended purchase is void; denies that equity should decree said transfer or purchase to be void, and in favor of the plaintiff, and against the said Walter D. Storey. Walter D. Storey, defendants, alleges and avers that said transfer was made in good faith for valuable consideration, and without any knowledge on his part either directly or indirectly—that such land was fraudulently obtained; or that said Harry Cannon or any of his witnesses have testified falsely with reference to said entry or the final proof thereof, or had made any false or fraudulent statements or representations concerning the same, either to the Register or Receiver of the United States Land Office or any other official of the Department of the Interior; avers that all of his actions and conduct with reference to the purchase or transfer of said property was bona-fide and in conformity to equity and good conscience. Walter D. Storey avers that he had no knowledge or information that the plaintiff herein was being deceived or oppressed or injured by any of the transactions of Harry Cannon with reference to his said entry.

Except as herein expressly denied or expressed, the defendants deny each and every allegation, matter and thing contained in plaintiff's bill of complaint filed herein.

These defendants hereby reserving all manners of exceptions that may be had to the uncertainties and imperfections of plaintiff's bill of complaint.

Having thus made full answer to all the matters and things contained in said bill of complaint, the defen-

dants pray to be dismissed hence with costs in their behalf incurred.

C. L. HARRIS,
Attorney for Defendants.

State of Montana,
County of Yellowstone,—ss.

Personally appeared before me the undersigned, Walter S. Storey, one of the defendants in the above cause, who being duly sworn, says that he is one of the defendants in the above entitled cause and that the matters and things contained in said answer are true.

WALTER D. STOREY.

Subscribed and sworn to before me this 1st day of May, 1915.

C. L. HARRIS,
Notary Public for the State of Montana, Residing at
Billings, Montana.

My commission expires June 5th, 1915.
(Notary Seal)

Service of within and foregoing answer admitted and receipt of copy thereof acknowledged this ——— day of May, 1915.

Attorney for Plaintiff.

(Indorsed): Filed May 3rd, 1915. Geo. W. Sproule Clerk, by C. R. Garlow, Deputy.

Thereafter, on January 26th, 1916, decree was filed and entered herein in the words and figures following, to-wit:

*In the District Court of the United States, in and for the
District of Montana, Billings Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

JUDGMENT.

This cause came on for trial at Billings, Montana, December 24th, 1915, to the court sitting without a jury. Plaintiff was represented by B. K. Wheeler, United States District Attorney, and Frank Woody, Assistant United States Attorney for the District of Montana. The defendants were present in person and by their counsel, C. L. Harris and Johnston & Coleman. Witnesses on behalf of both plaintiff and defendants were sworn and examined and the matter submitted to the court for its consideration. Thereafter and on January 22nd, 1916, the court made and filed its findings of fact and conclusions of law, which, omitting title of court and cause, are as follows, to-wit:

“Herein the court finds that the allegations of fraud in the complaint and any of them are not proven; that the allegations of the answer by way of new matter in

defense are proven and therefore the court concludes plaintiff is not entitled to recover herein. Decree accordingly."

Wherefore, by reason of the law and the premises aforesaid, it is ordered, adjudged and decreed that the plaintiff take nothing by this action; that the defendant, Harry Cannon, did not practice fraud in securing patent to the lands embraced in his homestead entry, to-wit: The west half of the northwest quarter, the northeast quarter of the northwest quarter and the northwest quarter of the northeast quarter of section twenty-four in township two south of range twenty-two east of the Montana Meridian in Montana; and that the title of the defendant, Walter D. Storey, in and to said lands is good as against the United States of America.

Done in open court at Helena, Montana, January 26, 1916.

BOURQUIN,
Judge.

(Indorsed): Filed and entered January 26th, 1916.
Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy.

WHEREFORE, said pleadings, process and final decree are entered of final record herein in accordance with the law and the practice of this court.

Witness my hand and the seal of said court at Helena, Montana, this 26th day of January, 1916.

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy.

(Indorsed): Title of Court and Cause. Final Record. Filed and entered Jan. 26th, 1916. Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy Clerk.

Thereafter, on January 22nd, 1916, the Court's decision was duly rendered and filed herein, in the words and figures following, to-wit:

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

vs.

HARRY CANNON, et al.

Herein the court finds that the allegtaions of fraud in the complaint and any of them are not proven; that the allegations of the answer by way of new matter in defense are proven. And therefore ~~the~~^{the} the court concludes plaintiff is not entitled to recover herein. Decree accordingly.

MEMO.

The homestead law requires residence, improvements and cultivation. Continuous residence, which does not import continuous presence, is required upon the land. No particular amount of improvements and cultivation is specified by law. Enough to indicate the good faith of the entryman, in view of all attendant circumstances, satisfies the law. To overthrow a patent, requires clear and convincing proof of fraud. Suspicious circum-

stances do not meet this requirement. In this case no more than suspicious circumstances appear, in the main as consistent with absence of as with fraud.

In view of Cannon's occupation, that chance passers saw him not nor evidences of occupancy, is not inconsistent with his continuous residence though not continuous presence, upon the land. The only witness that looked into the cabin, saw evidences of inhabitancy. The others, doubtless, were not severely scrutinizing the place nor interested in remembering. Improvements and cultivation show good faith. The fact that Cannon added improvements after final proof, lived there more than a year after proof, and did not sell till 16 months after proof, all are in favor of good faith. Story paid full value for the land and had no reason to believe Cannon had not fully complied with the homestead law, even if Cannon had not. Story is an innocent or *bona fide* purchaser defeating any cancellation of the patent if fraudulently secured by Cannon.

BOURQUIN, J.

(Indorsed): Filed Jan. 22, 1916. Geo. W. Sproule, Clerk. By Harry H. Walker, Deputy.

Thereafter on June 20th, 1916, notice of motion to approve statement of evidence on appeal was duly filed herein as follows, to-wit:

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

**NOTICE OF MOTION TO APPROVE STATEMENT OF
EVIDENCE ON APPEAL.**

To C. L. Harris and W. M. Johnston, Attorneys for
Harry Cannon and Walter D. Storey, the above
named defendants:

YOU WILL PLEASE TAKE NOTICE that the
undersigned, solicitor for the complainant and appellant
herein, has this day lodged with the Clerk of the afore-
said court complainant's statement or proposed record
of the evidence on appeal herein, and that at the City
of Helena, in the State and District of Montana, on
the 6th day of July, 1916, at the hour of 10 o'clock
A. M., or as soon thereafter as counsel can be heard,
the undersigned will ask the Court or Judge to approve
the aforesaid statement of the evidence on appeal herein.

Dated this 16th day of June, 1916.

B. K. WHEELER,

United States Attorney, Solicitor for Complainant.

Due service of the foregoing notice is hereby admitted this 17th day of June, 1916.

C. L. HARRIS,
H. J. COLEMAN,
W. M. JOHNSTON,
Solicitors for Defendants.

(Indosed): Title of Court and Cause. Notice of Motion to Approve Statement of Evidence. Filed June 20, 1916. Geo. W. Sproule, Clerk.

Thereafter, on July 10th, 1916, a statement of the evidence on appeal was duly approved and filed herein in the words and figures following, to-wit:

*District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,
Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

STATEMENT OF THE EVIDENCE.

BE IT REMEMBERED that the above entitled action came regularly on for trial before the above entitled court, on the 23rd day of December, 1915, the plaintiff being represented by B. K. Wheeler, United

States Attorney, and Frank Woody, Assistant United States Attorney, and the defendants by C. L. Harris, Esq., and W. M. Johnston, Esq.

And that thereupon the following proceedings were had and the following testimony was given by the respective witnesses, to-wit:

GUS IMHOFF, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WOODY.)

I reside at Park City and have resided there fifteen years. I am acquainted with the defendant Harry Cannon and have known him six or seven years. I am acquainted with Walter D. Storey and have known him for twelve or fifteen years. I know where the tract of land is situated on which Harry Cannon filed a homestead entry and afterwards obtained patent to. I know where Walter D. Storey's home is. It is about a mile, maybe a mile and a half from the land on which Mr. Cannon filed. Between May 1st, 1909, and January 24th, 1911, I was in the employ of Mr. Storey. I was in his employ from some time in the spring until in June sometime, I cannot tell the date, probably the 10th of June, 1909. I commenced working for Mr. Storey in October, 1908, and worked for him until some time in June, 1909. During the spring of 1909 I was taking care of sheep for Mr. Storey, herding sheep, about six hundred. I had a sheep camp north

of Mr. Storey's land, and south of the Cannon land. From the spring of 1909 until June, 1909, I did not have the sheep camp at the same place all of the time. I know where the cabin was on the Cannon land. My sheep camp was a mile and a half, maybe not that far, a mile and a quarter from that cabin. During the time I was working for Mr. Storey in the spring of 1909, until June 1909, when I quit, I was at and around that cabin. I was there most of the time in May. From the first part of May up to June when I quit I had the sheep on the Cannon land, and had my camp right on the Cannon land. My camp during that time was three or four hundred yards from the Cannon cabin, it was right beside the cabin, that is close to the cabin. I was grazing the sheep up and down the creek on the same section Mr. Cannon's ranch is on, and outside of that too, and I grazed the sheep on the Cannon land. I grazed the sheep on the Cannon land by Mr. Storey's orders. I think I put my camp on the Cannon land about the first of May. I moved the sheep up there about the first of May, maybe a little bit in May, when the lambs were big enough to move. Mr. Storey moved them from the shed to Mr. Cannon's place. I think I was there about three weeks as near as I can tell. When I went to work for Mr. Storey in the fall of 1908 that cabin was on the Cannon place. As long as I camped there the door was open. In 1908 the door was open and the cabin was in poor condition. The floor of the cabin was in bad condition, cattle had been in there and I

suppose horses had too. If I remember right there was some window lights broken out and on the northwest corner the dirt was off the roof, that is it would leak if it would snow or rain, it had a dirt roof. Of course I didn't pay much attention to it but it was not fit for a person to live in. As near as I can tell the cabin was probably 16x24 feet, a log cabin with a dirt roof. It had a window on the west and a door on the south. In May 1909, about that time, the door wasn't open and the window was closed. That is boards were nailed over them, or put on hinges as near as I could tell and hooked on the inside. They were shutters put on from the outside so that they could be swung out and in. Of course I never investigated them, but I think they were on hinges so that they could be opened and closed. After I quit working for Mr. Story in June, 1909, during the balance of the year 1909 and during 1910, I had occasion to travel back and forth by the cabin. There is a road that runs right close to the cabin, it is not over twenty-five steps from the cabin on the west side. I used to go by there going to town once or twice a week. To the best of my knowledge I never saw Mr. Cannon on the homestead. When I had my sheep camp there I did not see Mr. Cannon on the place. From the first of May up until the time I quit in June, 1909, I saw Mr. Cannon on the Storey place frequently, I was there several times and I saw him working there. When I was at the Story place once or twice, I think for supper, Mr. Cannon was there and ate his meals. During that time Mr. Cannon was

breaking horses, driving horses, on the Storey place. After I quit working for Mr. Storey I saw Mr. Cannon on the Storey place in 1910, I seen him go up there twice. One Sunday morning he went up towards his place and came back, and the next time I seen him was when he built his little building. In 1910 I saw Mr. Cannon around the barns on Mr. Storey's place, it was around what they call the trotting barn, where he had his trotting horses. On the Cannon place in 1909, there was, besides the cabin, an old corral and I think an old chicken house. In 1910, I think, there was a small barn put up there, in the spring of 1910. It was about 10x12 feet. That building has since been taken away.

Cross Examination.

(By MR. HARRIS.)

I went to work for Mr. Storey in October, 1908, and continued in his employ to the best of my knowledge until June, 1909. I didn't finish my work in April, 1909. He was lambing in 1909, in April and in March, if I remember right, I think after the lambing season I remained until June sometime. Of course I might be mistaken as to that, anyone might. My business was herding sheep and tending sheep camp. In 1908 when I worked for Mr. Storey I herded the sheep there until the weather got so bad he had to feed the sheep. I moved them in and fed them that winter. I was there at the ranch helping do the chores, milking, hauling hay, feeding the sheep and feeding the stock until in March sometime and we commenced

to work with the sheep again, lamb out, lamb the sheep, that was I think in March and April. We started lambing that year I think in March, about the 15th, and I think we got through about the 1st of May, if I remember right. I saw Mr. Cannon build the barn on his place. Mr. Cannon was residing at that time at Mr. Storey's, he was coming from that was from the ranch. I was not stopping at Storey's at that time. At that time I was living right above on the same section Mr. Cannon's ranch is on, I was living on Mr. Storey's land, about three-quarters of a mile south of the Cannon place. After I left Mr. Storey's employ in June, 1909, I was not at the Storey place frequently, and I do not know where Mr. Cannon took his meals after June, 1909. When I would see the Cannon place I would be going right through it going to or coming from town. After I quit working for Mr. Storey in June, 1909, I lived at the Harris' place about three miles north of the Cannon place. My observations of the Cannon place was while going to and returning from Park City. I would go to Park City maybe once and maybe twice a week. Sometimes I would go by the place in the morning and come back in the afternoon. Would go by about nine, half past nine or ten o'clock in the morning and would return between three and four or four and five in the afternoon. I never saw Mr. Cannon at his own place that I know of. I saw him building the little barn in the spring of 1910. Aside from the times I have mentioned, I don't know where he resided, made his home or took his meals.

or where he slept. I only saw him on the road driving horses from Mr. Storey's place to town and back. So far as I know he might have resided on his homestead, taken his meals there and slept there, and made it his home to the exclusion of one elsewhere.

BY THE COURT: When was proof made in this case?

MR. HARRIS: January 24, 1911.

WILLIAM H. HARRISON, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

My name is William H. Harrison. I am a farmer and reside six miles from Park City. I am acquainted with Mr. Storey and have known him about eight years. I know Harry Cannon and have known him about the same length of time. I never had any great acquaintance with him but I knew who he was. My postoffice address is Park City and I reside about six miles north of Park City. I live up the creek from the Storey place, a little west and north. I know where the Cannon homestead is and am acquainted with it. During the years 1909 to January 24, 1911, there was just a little log cabin on that place, I should judge about 14x16, might be a little one way or the other. I had occasion to pass over this tract of land every time I went to or returned from town or had any

business down the valley I went by there. I would go right through the land. A short cut to the road went right through the land. The cabin was twenty or twenty-five feet, something like that, from the road. Of course some weeks I would go oftener than others, sometimes may be I would not go for ten days, but taking everything into consideration I averaged about as much as twice a week from May 1, 1909, to January 23, 1911. On some occasions I would go down to Park City in the morning and come back at night, and other times I would go down and right back home again. At that time I was doing quite a good deal of work on the river bottom and lots of times I would go down early in the morning and come back, sometimes would go down and come right back. I made trips backward and forward whenever the occasion presented itself. Between May 1, 1909, and January 24, 1911, all that I ever knew Mr. Cannon doing was training horses for Mr. Storey or something of that kind. I believe he resided at Mr. Storey's. I understood that he was there working for Mr. Storey all the time. I was on the Storey ranch once or twice. I saw Mr. Cannon driving Mr. Storey's horses I suppose. From May 1, 1909, to January 24, 1911, in passing the cabin I never saw anyone there at all. I never saw any smoke coming out of the chimney. During that period of time I saw some of Mr. Storey's teams and men working in the field, I suppose putting in the crop or attending to it, I didn't pay any particular attention to what they were doing. I saw some land

plowed there, I should guess somewheres about eight acres. All the teams I ever saw working there were Mr. Storey's teams and men. That cabin had been on the place ever since I have been in the country, that is eight years this fall. I remember a fence being put around the plowed land, but cannot give you the date. The fence there in 1909, was just a little corral, the other fence was put there a little over a year ago, out on the north line clear through the whole length of the place. In 1909 there was no wire fence with posts placed on the land. Up to the time Mr. Cannon got hold of it, the cabin was standing there without any doors or windows in it. The holes were there and some time after he got hold of it, a long time after he got hold of it there was a door put up there but I don't know whether window lights or not. The window was nailed up with boards. I looked into the cabin when I first came to the country but not after that. I think the boards are still on they were the last time I went past the cabin. I remember of a little barn being built there, cannot give you the date, but I think it was about the time Mr. Storey got hold of the land. That barn was there only a short time. It was only a little small contraption of a thing, would hold about three horses I think. I don't think it remained there a month after it was put up. During the years 1909 and 1910 I passed by the cabin as late as eight or nine o'clock at night, but I never saw any lights in the house. I passed by there in the winter time when there was snow on the ground during the years 1909,

1910 and 1911. I never saw or noticed any trails or paths made around the place when there was snow on the ground. If there had been any more than likely I would have seen them. I never noticed any, and never saw anything that looked like they were living there. I know August Kirk and I understand he was working for Mr. Storey by the month in 1910. I seen him working on the Cannon land.

Cross Examination.

(By MR. HARRIS.)

If there was any snow when I went by there it would be on the ground. I might have been by there when there was snow on the ground and it might have been bare. I saw Mr. Cannon working on the barn when he was building it. I would not try to tell you the year. I never investigated the house. So far as I know it might have been furnished, might have been plumb full. At any time I passed by there Mr. Cannon might have been in the house, I would not say he was not. I never inquired or looked in there to see, although there were no signs of anyone being there. The board over the windows I could not tell whether or not they were hanging on hinges. So far as I know the ground might have been plowed and seeded under a lease arrangement between Mr. Cannon and Mr. Storey, I know nothing about their business. All I know is that I saw Storey's teams and men working that ground. I don't know whether Mr. Cannon or Mr. Storey put the fences on the land, they were put there about two years ago, if I remember right. When I

said I saw Mr. Cannon driving horses that I presumed were Mr. Storey's I never knew of Mr. Cannon owning any horses. These horses I saw him driving were Mr. Storey's racing horses, trotting horses or something of that kind.

Re-Direct Examination.

(By MR. WHEELER.)

When I passed by the cabin in the summer time there was no signs that anybody was living in the house. There was no garden or nothing to draw your attention that I could see.

MISS ROBIN HARRISON, being first duly sworn as a witness for and on behalf of complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

I am seventeen years of age and live seven miles north of Park City. I know where Mr. Cannon's homestead that he took up was, and I know where the cabin was upon that homestead. Beginning with May 1, 1909, up to January 24, 1911, I had occasion to pass by that cabin during the school months; the cabin was between my home and the school. I would pass by the cabin going to and coming from school. The road ran right close by the cabin, about as far as from here to the other end of the room. I never at any time saw anybody around close to the cabin, but I did see some people building a barn there when I went

by one time. During the time that I passed by there in the years 1909 and 1910 up to January 24, 1911, I couldn't say that anybody was not living in the cabin, but I never saw anybody living in it. The window looked there was some boards nailed up over it. I never saw any garden around the place. I know Mr. Storey and know Mr. Cannon by sight, but I was never introduced to him. I saw Mr. Cannon on the place once; that was the time he was building the barn. I don't know how big a barn it was, but it was not very big I know. I passed there in the winter time when there was snow on the ground, and I never saw any tracks or paths around the cabin except some horse tracks and I never noticed any smoke coming out of the chimney of the cabin. I looked into the cabin once and that was when the boys were around there getting some rabbits, but I do not remember what year that was. I have been going to school there from 1909; started in the fall of 1909, up until the spring of 1914. The time I looked in the cabin was two or three years before I quit school. It was before the barn was built; quite a while before, but I don't remember just when. When I looked in the cabin I saw a table in there and a stove and bed. There was a floor in the cabin and in one place it was broken down. There was some dishes in the cabin, enough I guess for one person to use. There was not any groceries in there though. The windows at that time were nailed up—looked like boards nailed across them. The general appearance there at that time did not indicate that

any person was living there. There were no indications about the house or inside the house that any person had been living there recently. From the time I started to school in 1909 until January 24, 1911, I went to school regularly. School would begin in September and end the last of May. I went past that place regularly every school day when I went to school—that would be twice a day, going to school and coming from school.

Cross Examination.

(By MR. JOHNSTON.)

I don't know exactly how far my home was from this cabin, but I judge about three miles and a half north of it. Mr. Harrison who just testified is my father. The Cannon cabin was about half way between my home and the school, so that I had to go about seven miles to school. I am now seventeen years old. In going to school I would ride and would go past this cabin going to school about eight o'clock in the morning or a little after, returning^{home} about five o'clock I expect—somewhere between four and five. My younger brothers would be with me; one is fifteen and the other ten. I went from September 1909 to the last of May, 1910, and from September, 1910, until May, 1911. I don't remember how much snow there was on the ground the winter of 1909 and 1910, or the next winter up to January, 1911. I saw the horse tracks around the cabin when I went to school. I would say that I saw Mr. Cannon building the barn within two years after I started to go to school. It was after I started to go to school. He built it either

the year I started to go to school or the year after. I don't know whether there ever were any horses kept in that barn, and I never saw anything to indicate that any stock had been there. I said that I looked into the cabin when the boys were hunting rabbits—I mean my brothers. The boys did not go in the house with me, but they were out around the house. The rabbit ran under the house and I just went in for a minute and came out again. I guess I was in there longer than just a minute, but not as long as five minutes. I never mentioned anything to anyone about being in the cabin until the government inspector inquired about it last summer I think it was—that is the gentleman sitting behind Mr. Wheeler. From the day I went in there up until the time he spoke to me about it, I hadn't thought about what furniture was in the house, but I had kept it in my mind. The dishes were on the table. I did not look around but I didn't see any groceries or provisions. I did not make any investigation to find out for certain whether there was any there. I think there was some bed clothes on the bed, but I didn't notice whether there was any trunk there. I didn't notice whether these boards on the outside of the window were nailed onto the house or hanging on hinges; all I noticed was that boards were on the windows. But I did not notice whether there were any window lights in. I didn't go to school in the fall of 1908, but in the spring of 1909, as that was the first time we lived there.

MRS. MAUDE KIRK, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(MR. WHEELER.)

I reside at Park City. During the year between May 1, 1909, and January 24, 1911, I lived on one of the Storey farms—part of the time down by his house. The first year I lived on one of the farms, down by his house. I know Mr. Harry Cannon and first met in the spring of 1909, at Mr. Storey's. He was breaking race horses at that time for Mr. Storey, and lived at Mr. Storey's when I knew him. I saw him there at Mr. Storey's at meal times and between meals. Between May 1, 1909, and January 24, 1911, I saw him at his meals at Mr. Storey's whenever I was there and I was there off and on at times. From September 10, 1910, until May, 1911, I was there helping work. From May 1, 1909, until March, 1910, when we moved down by Mr. Storey's house, I was not at Mr. Storey's so very much, but in March, 1910, we moved down to about eighty rods from Mr. Storey and from that time until January 24, 1911, I had occasion to visit Mr. Storey's place frequently, and I would see Mr. Cannon eating his meals at Mr. Storey's every day while I was there. I helped do the cooking. Of course, I didn't do it all alone. That was between September 1910, and May 1911. I know where Mr. Storey's bunk house was on his place. Mr. Cannon didn't stay there—he stayed at what they called the trotting barn. The

trotting barn was east of the Storey house, not very far away, and on the Storey land. Mr. Cannon kept his clothes in the room where he slept in the trotting barn. I did some washing for Mr. Cannon. He asked me if I would the washing and I did it. I never saw Mr. Cannon and Mr. Storey together only when they ate, but I would see them eating together at Mr. Storey's whenever I ate there—that is, where Mr. Storey was living. Mr. Storey was there most of the time. Of course, he would go to town once in a while. I didn't see Mr. Cannon and Mr. Storey around the trotting barn together, but when I would see them together would be at Mr. Storey's house. In March, 1910, until January 24, 1911, I would eat my meals at Mr. Storey's once and sometimes twice a day during the winter months. While I was cooking at Mr. Storey's Mr. Cannon was there regularly, and Mr. Storey also took his meals there regularly.

Cross Examination.

(By MR. JOHNSTON.)

We first lived on one of Mr. Storey's farms that is called the Murray ranch, that was the first year we were there. We lived there until March, 1910. From March until September I helped off and on at Mr. Storey's, and during that time we were living about eighty rods from the Storey house and during that time I would only Mr. Cannon or Mr. Storey when I was at Mr. Storey's house. During that time I was every day for a while, maybe sometimes, I would not

be there one day out of the week—that would be from September until March. From March, 1910, to September, 1910, I was at the Storey house frequently. I visited Mr. Storey sometimes in the morning, sometimes in the afternoon and sometimes in the evening. I should judge during that time I was there once every day anyhow. I had to go over every day because we bought milk and butter and I had to go over after it. That was from March to September, 1910. Sometimes I would go after in the morning and sometimes in the afternoon. I did not stop for my meals at that time. I have three children—sometimes the children would go after the butter and milk—often we would go together, and at other times they would go when I would not. I didn't see Mr. Cannon there every time I went over after the butter and milk, but I did see him there when I took my meals there between September, 1910, and May 1911. At that time I was living in one of Mr. Storey's houses with my family about eighty rods from the Storey house. I was working for Mr. Storey at that time, helping around and cooking off and on. During the winter of 1911 when Mr. Storey's daughter was sick, I cooked there quite often. From the 21st of January, 1911, until May, I was there then nearly every day, and that is the time when Mr. Cannon was living in this room in the trotting barn. Prior to that time I couldn't swear that he slept there all the time, but I supposed that he slept there as his bed was there. His bed was there from September, 1910,

until 1911. During the holidays I was at Mr. Storey's some of the time cooking—once a day perhaps, and before the holidays in 1910 I was there quite frequently—once a week at least helping cook—I was there generally before dinner, leaving for my home about four o'clock in the afternoon. From January 21, 1911, until May 1911, I would be there for dinner, sometimes for supper. I saw Mr. Cannon's bed in the trotting barn and I saw Mr. Cannon in there—he must have slept there. I never saw Mr. Cannon on his homestead. I never was in his cabin and was never up at his cabin in the night time. I don't know but what some other person working for Mr. Storey occupied this bed in the trotting barn. Mr. Storey had two other men there besides Mr. Cannon. Mr. Storey asked me to do his washing and he paid me for it. I don't what clothes Mr. Cannon had in that room, as I didn't take any notice of what clothes he had. That was supposed to be his room and I don't think anybody else did sleep there. I am just giving you what I think, what I suppose, not what I know.

Re-Direct Examination.

(By MR. WHEELER.)

I knew this was his room and that I say that it was his room, because they, that is, Mr. and Mrs. Storey, always called his room. I said that I saw some of his clothes there, and I know they were his clothes because I saw him wear them. I heard Mr. Storey say quite frequently that this was his room.

I have been in the room. When I did his washing he brought the clothes to me and came and got them. I was in that room twice. From March, 1910, until September, 1910, Mr. Cannon was there breaking horses, and I have seen him eating his meals at Mr. Storey's during that time when I ate there, and I ate there during the time I worked there between March and September, 1910.

Re-Cross Examination.

(By MR. JOHNSTON.)

When I heard Mr. Storey that was Mr. Cannon's room it was before Mr. Storey's daughter was sick, but I do not remember what brought up the conversation, or the occasion of him saying so. I know it was before his daughter was sick because when I first went to work there I heard them say so.

FRED H. FOSTER, being duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WOODY.)

I am register of the United States Land Office at Billings, Montana. As such register I am the custodian and have in my possession the records showing entry upon public land in the Billings district. I have here tract book showing the homestead entry of Harry Cannon. This tract book also shows entry made by Walter D. Storey for the same tract of land which was entered by Harry Cannon on the relinquishment of the Storey entry.

(By Mr. Woody.)

I desire to offer that entry in evidence.

(By MR. HARRIS.)

It is objected to as being incompetent as well as immaterial.

(By THE COURT.)

The objection will be overruled.

“Homestead Entry No. 5561. Bozeman, Montana. Serial. Made July 5, 1904, by Walter D. Storey for the West half of the Northwest quarter, the Northeast quarter of the Northwest quarter, the Northwest quarter of the Northeast quarter, section 24, township 2 south, range 22 east. Billings Serial No. 01235. Cancelled by relinquishment Mah 1, 1909, at 9:40 A. D.”

Cross Examination.

(By MR. JOHNSTON.)

There was another relinquishment before that. The first filing was made by Andrew H. Murray, Bozeman Serial 4142.

AUGUST KIRK, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

I am a farmer. I am acquainted with Walter D. Storey, and also with Harry Cannon, and have known both of those men since the spring of 1909. I went

to work for Mr. Storey in the spring of 1909 and at that time Harry Cannon was driving or breaking horses for Storey, and he continued to be driving or breaking horses for Mr. Storey for a couple of years. While Mr. Cannon was driving and breaking horses for Mr. Storey, he roomed in what they called the trotting barn and he had trunks in the trotting barn. I know where Cannon's homestead entry was, but I never seen him there from May 1, 1909, to January 24, 1911. During the summer months of 1909 and 1910, he took some horses and went away, but I don't know where he went to and don't recollect how long he was going but I would say four months more or less. There was some land cultivated on Mr. Cannon's homestead. Charely Storey, a brother of W. D. Storey, plowed it the first year, but I don't remember who plowed it the second year. I planted the crop. The first year I planted corn and the second year I planted beets. I did the work under Mr. Storey's direction and Mr. Storey paid me for doing it. The teams and machinery that were used were supposed to be Mr. Storey's. They were the same teams and machinery that I used for Mr. Storey right along. The seed was furnished by Mr. Storey. I don't know who harvested the crop, but there was a lady, German lady, who tended the beets. From May 1, 1909, to January 24, 1911, or the first year that I was there, Mr. Cannon got his meals at Mr. Storey's whenever he was there. The second year I don't know where he got his meals. I don't know who built the barn on the homestead

but I saw it there. During the winter of 1910 and 1911 I had occasion to go past the cabin on the Cannon homestead once or twice a week. During that time there was no indication that anybody was living in the cabin. The windows were boarded up. During the winter of 1910 and 1911 I saw Mr. Cannon and talked with frequently. At that time he was stopping at the trotting barn at W. D. Storey's, and was eating his meals at Mr. Storey's. During that time Mr. Storey was home and ate his meals at home most of the time. I ate my meals there twice a day during that time, dinner and supper, and we all three ate together. ~~I know that Mr. Storey and Mr. Cannon were together.~~ I know that Mr. Storey and Mr. Cannon were together some about the trotting barn. The horses Cannon was taking care of were supposed to be trotting horses—race horses.

Cross Examination.

(By MR. JOHNSTON.)

During the summer of 1909 I was living at one of the Storey ranches known as the Murray ranch. That was about three-quarter of a mile from Mr. Storey's home place. I was working for Mr. Storey that summer and worked on the home ranch some. I continued to live at the Murray ranch until the spring of 1910. While I was living at the Murray ranch, I would be down around the barn and house on the home ranch. All that summer I took dinner and supper at the home ranch. It was in the spring and fall that I saw him taking his meals at the Storey

place. He was away that summer with some horses—the middle part of the summer, June, July and August. He was going about four months, more or less. I don't know what he was doing with these horses while he was away. In 1910 he left in the spring or fore part of the summer and stayed until towards fall; he was going may be four or five months. I said that Mr. Cannon roomed in this trotting barn, but did not see him sleep there. I supposed he slept in the trotting barn where he had his bed. I was never up at his cabin during the night time and do not know whether he ever slept in the cabin or not. I don't know where he slept a single night from May 1, 1909 to January 24, 1911. During the winter I was on the Cannon homestead may be once or twice a week. I was trapping that time and would go by the cabin in the day time or towards evening. I never was in the cabin but that I saw that the windows were nailed up. I didn't examine to see whether the boards were nailed to cabin or hanging on hinges. There were no window lights—you could look through the cracks of this shutters. I looked in a time or two—peeked in that was all—that was in 1910.

Re-Direct Examination.

(By MR. WHEELER.)

I said the room in the trotting barn was Mr. Cannon's room because he had his trunks there. On the homestead beside the cabin there was a small building—a kind of a stable. That remained there may a

month or two months, but I don't know what became of it.

Re-Cross Examination.

(By MR. JOHNSTON.)

I don't who built the stable there and I don't know how long it remained there—I didn't pay any attention to it.

MRS. W. H. HARRISON, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

My name is Jessie Harrison and I am a wife of William H. Harrison who has testified here. I am acquainted with W. D. Storey and I also know Mr. Cannon. I know where the Cannon homestead is. I live about four miles from there. Between May 1, 1909, and January 24, 1911, I had occasion to pass by there at different times; sometimes twice a week going to town. I passed by there sometimes in the evening or at night with the children, and I also passed by there in the winter time when there was snow on the ground. I never saw anyone there and I never saw any indications of anyone living there. The window was nailed with boards straight up and down and the door was ajar when I went by there. I never did see any smoke coming out of the chimney. When I went by the place in the winter time I never noticed

any tracks or paths there, and I never saw any light in the house when I passed there in the evening.

Cross Examination.

(By MR. HARRIS.)

Between May 1, 1909, and January 24, 1911, I passed there a good many times at night, but I couldn't tell you how many times. I would go by there at different times sometimes twice a week, and there were times when I would not go so often. In the winter time I would go less than during the summer and fall months, but I would go whenever it was necessary. I didn't take any observation as I passed to ascertain the condition of the earth or the condition of the cabin with a view of ascertaining whether or not anyone actually stayed there, although I think if anybody lived there they ought to have a window. As far as I remember the boards were nailed on the window. I don't remember how many times I passed there and observed that the door was ajar, but I do remember to have seen it ajar.

W. J. LOEFFER, being first duly sworn as a witness for and on behalf of the complainant, testified as follows:

Direct Examination.

(By MR. WHEELER.)

My business is principally farming. I live at Park City and have lived there since 1892. I am acquainted with Mr. Storey and also a little with Mr. Cannon, but

not so very well acquainted with him. I know him when I see him. I know where the ground lays that Mr. Cannon had in his homestead and I know where the cabin is on that land. Between May 1, 1909, and January 24, 1911, I passed by there quite frequently. In passing by I would go within forty or fifty feet of the cabin. In going by there I was generally looking after stock, as I had cattle and horses on the range. I don't recollect during that time of ever seeing anyone on the place, and I don't think I ever saw any indications of anybody living there. If anybody had lived there I probably would have seen some indications and if they had lived there steady I am sure I would. If they had lived there for fourteen months continuously, I think I would have seen some indications. I never did see any light in the house or any smoke coming out of the chimney. The window was nailed up a part of the time, but as to the door I don't remember. It seems to me there was a door there, but that it was closed. I don't think there was any grass to speak of within four or five feet of the door. I don't remember of passing there in the winter time, although I might have done so as I hauled some wood during that winter. I don't remember when the shack they called a barn was built there.

Cross Examination.

(By MR. JOHNSTON.)

I was living at Park City and my farm is a mile east of Park City. I would be pretty hard for me to say from November, 1909, to January 24, 1911,

how often I went passed the Cannon cabin, but I would think it would be safe to say fifty times and more. I was looking after cattle and horses. I never noticed whether the boards were nailed on the cabin or hanging on hinges. I never was in the cabin after Andrew Murray who built the cabin moved out.

Plaintiff rests.

HARRY CANNON, being first duly sworn as a witness on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. HARRIS.)

I am one of the defendants in this case. I reside at Birkeley, California, at the present time. I am the person named in the complaint who made the homestead in controversy. I established my residence on this land May 1, 1909. There were some improvements on the place when I made my filing and I improved the place afterwards. When I made the entry the house was not in liveable order and I made a comfortable liveable house of it by putting in floor and window, window curtain and covered the roof. The windows were out of the house and I put in new windows and put in window shutters over the windows and I put in a floor and re-covered the roof. The window shutters were with board and hinges and put on to hook on the inside with a hasp so if I went away I had them on there so I could shut them up and

protect the windows from being broken out. I had a suitable outfit there for keeping house. I had three stoves, a heating stove, and I had a good bed, springs and mattress and good cover. I had a table, dishes, cooking utensils, my clothing and what 'stuff I have. Everything I had in my possession I had there—all my belongings. I kept provisions there, bacon, flour—most always bacon and flour there all the time. I had a chest there I kept the stuff in and closed up to keep the mice away from it. I had other articles of furniture there besides those I have mentioned—I had everything to keep house. I had all my belongings there—everything I had; chairs, furniture, bedding, cooking utensils and clothing. I kept part of my clothing in a trunk and part of them hanging up on hooks. After I established my residence on the land I continued to live there—that was my home from the time I filed until I left the country and went away. It was continuously my home all the time from May 1, 1909, to April 4, 1912. While I was living on the land I had some of it cultivated. I had about ten acres—something like that—under cultivation. I made a deal with a man to plow the land, furnish the seed and I would give him what he could raise—that was W. D. Storey. While I was occupying my homestead I was in the horse business, handling driving and road horses. I kept these horses at the Storey ranch. I rented a barn from Mr. Storey down there and kept part of them down there. Of course, the horses I was using riding and driving I kept at my place at the time I was up

there and when I wasn't I kept them down at this place. I made arrangement with Mr. Storey for these stables in 1907. I was at that time at Big Timber handling horses there—everybody's horses. In 1907 I thought I could have better quarters down there and I rented a barn. I paid him five dollars per month for each horse I kept there, and he furnished the horse feed. I had the horses there at Mr. Storey's place all of the time or practically all of the time from the 1st day of May, 1909, until 1912, I had horses there for different parties, in Big Timber, Columbus and Billings. Mr. Storey had no interest whatever in these horses. No one except myself was interested in any way or manner in homestead entry. I made the homestead entry and established my home there in order to have a horse ranch up there, as I was in the horse business. In handling the horses over at the Storey ranch I would be away from my homestead in the day time. I had horses down at the barn and I had kept my horses there through the day when I was down there and I drove the horses, drove up around my place and down to Park City. There was a track there and I drove the horses on the track part of the time and on the road part of the time, and at my place part of the time, and around anywhere through there. At night I would go home to my claim, my homestead entry. The race track was on Mr. Storey's land. I took my meals most of the time at my own place and part of my meals at Mr. Storey's. I ate breakfast most of the time at my home and part of the time at his place. Part of the time I

boarded some. If I had quite a few horses so that I was busy and did not have time to cook I boarded with him down there. When I was boarding down there I could leave up there about seven o'clock in the morning and when I was boarding myself, doing my own cooking up there, it would be around half past six, or something like that when I would leave my place. When I was boarding at Storey's I paid \$4.50 a week—paid it to Mrs. Storey. I was away from my homestead a short while in the summer—one summer for fifty-two days. That was the second summer I was away and it was in July. I took some horses I had in training to Bozeman to develop—to work them there some. After I got through at Bozeman I came back to my place. In 1909 I was away about the same length of time in mid-summer—say, in July or August. The first summer I was only away three weeks. I had some horses down there I was working for other parties, and I went away to deliver them, and was going practically three weeks. Those absences were necessary for me to earn a livelihood. When I made my entry there was some fencing on the land—it was partially fenced. There was a fence on the west side of the place and there was a fence on the north side, but it was not in very good condition at that time. On the south side there was a field fenced in and on the east side, a rim rock fence—not a wire fence, but a natural rim rock fence. I repaired the fence and put in new fence on the north side of it—used this rim rock fence and on the south side put in a new fence. I ran the

fence from the rim rock down through to that field so that it enclosed this side, so it was fenced. I bought posts and wire, staples and nails and lumber for the fencing. When I made the filing—it was relinquishment—there were improvements on there, a log house and a log barn. Later on the roof on the barn got bad and out of repair so I built a new barn. I used that barn and house to begin with for a while, but to be sure and safe and rather than put new material on the old barn, I built a new barn. The barn I built was still on the place when I left the country. I built the barn—late along in 1911 or the first of 1912, right along there. I left the country the fourth or fifth of April, 1912. At the barn I used on the Storey place there was one pretty small room there—used to be a harness room. I did not have anything to do with that room. All that I had anything to do with was the saddle I had in use with the horses there. Sometimes I had one horse and some times five or six. This room they speak of there is the harness room—kept the harness in there and horse boots—harness, blankets—horse blankets. I did not have my truck there—did not have my bed there, and I did not sleep there. There was a trunk in there—what we call a horse chest. It is locked up the same as a trunk and used to put horse boots in, horse blankets, harness and stuff like that that you are shipping or putting, and I had that in there. It did not belong to me. Of course, I had my harness in that room—would hang them up in there and take them in and out. I sold the land to Mr. Storey.

The transaction came up in this way: My business was handling horses and always had been for years before that and since until the last two years. I was offered a position over in Washington to take charge and handle the fair grounds and race track. I was corresponding with a friend in that place and they wanted me to arrange to go over there. When I got ready to go over there, after I had closed the deal and was going over, I made a proposition to Mr. Storey to sell him my place, and he asked me what I wanted for it, and I told him a thousand dollars. I sold it to him for a thousand dollars. That was just two or three days before I left. I never thought about selling this place any time before that, because I had the place over fourteen months after I proved up and got the title to it. After I made arrangements to go to Dayton and take the fair grounds and race track I thought then I would dispose of the place. In payment for the place Mr. Storey gave me a note for one thousand dollars at six per cent., payable on demand. He gave me this note on April 4, 1912, and it was paid I think May 15, 1912. I deposited the note in the Columbia County National Bank, at Dayton, Washington, and they sent it back here and collected it for me and I got the money from the bank at Dayton through the collection. I furnished the money myself to make proof and perfect my entry. I got the money working at my business of handling horses, buying, selling, handling and developing driving horses for different parties. I ran a public stable. I handled horses for

parties at Big Timber, Columbus, Billings, Bozeman and different parts of the country around. I carried a deposit in the Park City State Bank. It was a deposit drawing interest at six per cent. I made my homestead entry my home to the exclusion of one elsewhere for substantially the period of fourteen months before I made final proof. At the time I tendered my application to submit final proof I was actually living on the land, and at the time final proof was actually submitted I was living on the land.

Cross Examination.

(By MR. WHEELER.)

I first came to that country down there in 1902. From 1902 up until I made my entry I was working at the horse business. I went to work down there for Mr. Storey in 1902 and worked for him three years until 1905. I quit in 1905 and went to Big Timber, Montana, and had charge of the track and fair grounds there until the fall of 1907. I was handling and running a public stable, handling everybody's horses—in the horse business, buying and selling and raising and driving and developing drivers and harness horses. In 1907 I made arrangements with Mr. Storey for his barn down there to keep the horses in. I would come and locate down there and do the same business, handling driving horses, educating horses and buying and selling horses. Under my arrangement with him I was to pay him so much a month for each horse I kept there, and I also had an agreement with him what he would board me for. He was to charge me four and

half a week for boarding me, and I started to board with him in 1907 and continued until 1909. Mr. Storey told me that he had relinquished this particular piece of land and I located on it the same day he relinquished. I did not walk up to the land office with him, but I was up there and when he relinquished I filed the same day. I knew he was going to relinquish, and I came to town and filed, but I don't know that I came with him. I did not come with him any more than he came with me—we came on the same train. After I took up this homestead I did not continue to board with him steady—only part of the time. I did not board with him nearly all the time I had the homestead. I built a stable on the place—sixteen by eighteen feet. It was a frame stable built out of boards—just common ordinary boards on the outside—not matched boards but good new lumber, and it had a board roof—a pitched roof. I built the stable myself and it cost me thirty or forty dollars. I bought the lumber at Fred Stoltz's Lumber Company at Park City. I ordered it myself and paid for it myself. That was the latter part of 1911, or the first part of 1912. I put in some new posts—fences with posts and wire. I got the posts from Mr. Stoltz and paid fifteen cents a piece for them. I don't remember what wire was worth at that time, but I believe I paid the regular price. I hauled the posts and wire out myself. I believe I expended around three hundred dollars for posts, wire, lumber and nails. I put a new floor in the house, right after I made final proof in the first part of May some

time. There wasn't a bed or a thing in the house when I made my entry. I had in the house three stoves: an oil stove, a range and a heater, and used all three of them. I used the heater to heat the cabin and some times used gasoline stove and some times the range to cook with. When I was located at Big Timber I was batching up there and living the same as I was when I came down there, and I shipped the stoves down with me from Big Timber. I did not pay anything to Mr. Storey for plowing the land. I made an agreement with him that if he would plow the land and put in the seed, I would give him what he could raise on it. So far as cultivating the land is concerned, it did not cost me anything at all. The only things I spent any money for outside the barn was putting in the floor and for this fence and fence posts, wires, staples, nails and lumber. The only lumber I bought outside the barn was for putting in the floor in the cabin. I put in the floor myself. I would say that it cost me thirty-five or forty dollars—at least forty dollars—for lumber and nails for the cabin. It was a board floor made of boards one inch thick and a foot wide and the windows I boarded up. The materials for the windows and the floor and for making the shutters would probably cost somewhere around forty dollars. It was new lumber that I used. The posts and the wire and staples for putting up the fence probably cost me around fifty dollars. The forty dollars for fixing up the cabin and the fifty dollars for the fencing makes ninety dollars, and that was all I expended outside of building the

barn. The barn cost from thirty-five to forty dollars in addition. That is all I expended for my improvements. Of course, most of the improvements were on the place when I got it. The house, hog and chicken house and log barn were there. I repaired and fixed them up, but paid nothing for them. The improvements I have told you about are the only improvements I placed on the land. I was developing and handling harness horses—standard bred horses—they were race horses. The track on Mr. Storey's land was probably two or three hundred feet over half a mile. From 1909 to 1911 I handled a few horses for Mr. Storey on the same condition that I handled horses for any other party. During that time I handled probably eight or ten colts for him. I had all of my own equipment, boots for the horses and harness carts, slings and complete equipment for handling and developing horses. There were six box stalls in the barn. Part of the time I would have all of them filled and part of the time I would not. Horses were coming and going all of the time. I got a dollar per day for each horse I handled, and furnished feed and barn room. All of the personal property, cart, harness and everything I was using in connection with the horses I kept that at the barn. I did not rent all six of the box stalls, but I had one horse I would have one stall—I would have possession of the number of stalls for the number of horses I had. I paid five dollars per month for each box stall I used and for feed and bedding for the stall. All of the equipment I was using I would

keep in the little room at the barn. I did not keep all my harness there, but kept some at my place. There never was any bed in that room at any time I was there, and I never slept there. The horse chest was there—some people might call it a trunk. My cabin was about a mile and half from the barn, and the barn was about three hundred yards from Storey's house. In the summer of 1909 I took three horses to Bozeman, one belonged to Mr. Deverill, a man living in Billings, one to Mr. Secrest, a man living at Bozeman, and one to John Asbury, Cashier of the Big Timber National Bank. I trained these horses at the Bozeman race track. This is 1910 I am talking about. I was there fifty-two days, and that was all the time I was absent during that summer. In 1909 I was absent during the summer probably about two weeks. I took some horses I had been training down there to Bozeman that summer—but I did not work any horses at Bozeman that summer—I took these horses up there to deliver them. Beginning with May, 1909, during the remainder of that year, I think I boarded at Storey's about one fourth of the time, and during the year 1910 about the same. When I went to Bozeman in 1910 I went to work these horses on the track. I remember when I made my final proof. That is my signature or a copy of it.

Q. Now, why was it, Mr. Cannon, that you stated at that time as follows: "Q. If there has been such absence, give the date covered by each absence; and as to each absence, ~~state~~ state whether you, your family or

both, were thus absent and the reason for such absence.

A. I went away about the 20th of December, 1910, and was going for about two weeks. I sold some horses and had to deliver them, which was the reason of my absence." A. I gave that for 1909 you got there; that should have been 1909. I went away to deliver some horses and I remember giving that in.

Q. Now, in answer to this question, Mr. Cannon, you stated:

"Q. When was your house built on this land? A. I bought the improvements on the place and the house was there when I went on the place." Why was it you swore you bought that house, Mr. Cannon, when as a matter of fact you did not buy it? A. I don't remember that that way. I might have said I bought it. They asked me about the house and I told them that the improvements was on the place when I got it.

I might have told them I bought the place at that time, but I don't remember what I did tell them. I meant that the improvements which I have told them—you will find later on there, you will find I stated the improvements was on the place when I got it.

Q. Neither did you tell them, Mr. Cannon, that you were absent in Bozeman for about fifty-two days during the years 1909 or 1910? A. In 1910 I did not think I was required to do it. My fourteen months was up the first day of July and I was never there until after the first of July. I filed on this place the first day of May, 1909, and the first day of July, 1910, made fourteen months—my fourteen months would be

up. I came up here and went to the land office and asked Mr. Harris if I was supposed to stay there from then on. I came down to make my final proof and he told me I wasn't required to stay there. He said, "Go where you want to." And I went to Bozeman after that, and that is the reason that I didn't put that in there. I did put in my absence when I was in Bozeman in 1909—that was the only time I was absent in 1909, it was along in the fall some times. In the summer or fall I was away once with some horses—took them to Bozeman and delivered them. In 1910 I was away fifty-two days, but I went after the first of July. I was not in Bozeman driving horses on the track in 1909. I was absent there when I stated in 1909, but they got it 1910. In 1909 I took some horses and delivered them but did not drive any.

Q. You also state here, Mr. Cannon, that: "Q. Describe fully and in detail the amount and kind of improvement on each sub-division. State total value of the improvements on the claim? A. A log house 15x20 feet, barn about the same size, corrals, cellar, cultivated land, fencing. Total five or six hundred dollars." As a matter of fact you never placed upon that land, and there was not upon that land, that amount of improvements, were there?

A. I think there was, counting the improvements that was on there when I went there. That house and stable was built and quite a lot of fence built there. What improvements were on the place when I came—when I got it—and what I put on there was well

worth five or six hundred dollars when I made final proof. The house was on the place when I went there, but I don't know when it was built. Ten or eleven or twelve acres of land, something like that, was cultivated.

Q. You also answered this question: "Q. Have you any personal property of any kind elsewhere than on this claim, if so describe where the same is located? A. No." That was your answer at that time.

A. Yes. Well, at that time, and I say now I had some carts and harness down at the place where I was handling these horses. I sold this land to Mr. Storey for one thousand dollars. It consisted of one hundred and sixty acres. At that time I don't think there was any land selling around in that neighborhood. Railroad land was selling at \$1.25 an acre. This was not all fertile land. Part of it on the west side and part of it on the east was about as any rim rock land. There was a creek—Valley Creek—running through it, and along the creek there was some good land. West end and east end was rough land. Albert Buster and Chester Roberts were my final proof witnesses. Chester Roberts was Mr. Storey's son-in-law. Mr. Buster worked for Mr. Storey some parts of the year and some of the year he didn't. At the time I made final proof, I don't know whether he was working for Mr. Storey or not. He was living on his own claim and had worked for Mr. Storey prior to that time. At the present time I am handling horses. At the time I made my final proof I supposed Buster was eating his

meals at Storey's—I know he was eating there when I ate there. There was probably eight or ten acres of the land that was under irrigation—that was land below the Cove ditch. That land is valuable land—as valuable as any land in that neighborhood. I don't know whether Mr. Storey knew when I was absent from my place in Bozeman. He knew, of course, when I was boarding at his place. I did not hitch up his horses when he went to town, and he had nothing to do with any part of the barn I was using, and was not under any obligation to me nor I to him. When I was at the training barn I would see Mr. Storey around there. He was probably there once in a while to see about his own horses, but the biggest part of the horses I had were from outside. When I had any of his horses he would pay me the same as anyone else—a dollar a day for each horse. There was not very much of the time I was handling any horses for him. He didn't have very many horses. He would have six or seven colts a year. During 1909 I had horses all of the time, some times I would have one and sometimes four or five, and at times in Big Timber I handled as many as thirty head. I didn't have anybody working for me after 1909. In the harness room there is no stove, but there is a place for a stove there. When I would get up in the morning and go from my place up to Storey's I either rode horse-back or drove in a cart. I always kept my horse out there in the barn. That is the reason I built a new barn there. I moved away from there the fourth ^{or fifth} of April, 1912, and I built the

barn a short time before I went away. The other barn that was there had dirt roof on it and some of the poles under the dirt looked like they were not good and take it with dirt that makes a pretty roof. When I boarding at Storey's I used to get away from there at five o'clock in the morning, but when I cooked my own meals probably around six o'clock—half past five or six, and would get back about half past six or seven in the evening.

Re-Direct Examination.

(By MR. HARRIS.)

I never measured the plowed ground to determine the exact acreage, and at the time I submitted my final proof I did not know the exact acreage—my statement was merely an estimate. With reference to the land under the ditch, I did not have any water right for it. I think of the whole one hundred sixty acres, probably fifty acres can be cultivated. I had some of the harness and some of the appliances I used in training horses at my homestead and some at the Storey place. I had at the Storey place what I needed down there. In estimating the value of the improvements that I made on the land, I took into account my own labor—that is what I meant, my labor and the stuff I bought and everything. After I returned from Bozeman, when I was absent fifty-two days, I lived on my homestead, and after I submitted my final proof I lived on my homestead. I put the floor in the cabin right after I made the filing. If I said on cross examination it was after I made final proof, that was a

slip of the tongue. Right after I filed I put the floor in my house and fixed up there to live in.

It was stipulated and agreed by and between counsel for the respective parties, plaintiff and defendants, that the patent for the land in question was issued to the defendant, Harry Cannon, under date of June 26, 1911; that it was received at the Billings land office July 11, 1911; that it was taken from the land office by Harry Cannon on April 3, 1912, on which date it was recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana; and that the deed in question from Mr. Cannon to Mr. Storey was dated April 5, 1912, and acknowledged on the same day.

B. L. HARRIS, being first duly sworn as a witness for and on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I am cashier of Park City State Bank at Park City, and have been such cashier since the bank was opened in 1907. I know Mr. Cannon and have known him since 1908, or 1909. From May 1, 1909, until April 5, 1912, he transacted some business at the bank. During those years he was on a homestead up Valley Creek and I understood he was breaking horses. I know of his having transactions with horse men through checks being cashed at the bank and part of the money left there. These checks were made to Harry Can-

non. Mr. Storey had no connection whatever with the business that I know of. About the time that Mr. Cannon commutated his entry he cashed some certificates of deposits. He had a series of certificates of deposits, running from 1909 to 1912. I know something about a note from Mr. Storey to Mr. Cannon for one thousand dollars given in 1912. It was in connection with the sale of a piece of land. I drew the deed and took the acknowledgment, and I saw Mr. Storey sign the note at that time. The note was given to Mr. Cannon. I saw the note afterwards when it was sent to us for collection from Dayton, Washington—that was about thirty days after the note was drawn. It was payable on demand. The draft in payment of the note was drawn May 13, 1912, and mailed to Columbia National Bank at Dayton, Washington, and cashed by them at the Chase National Bank, New York, May 21. It was paid in Dayton sometime between the 13th and 21st. W. D. Storey paid the note. I don't think I was ever out at the Cannon homestead.

Cross Examination.

(By MR. WHEELER.)

All I know about the Cannon homestead is what Mr. Cannon told me, and all I know about what he drew any money out for is what he told me.

A. E. BUSTER, being first duly sworn as a witness for and on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I live in Park City and have lived there about ten years. From May 1, 1909, to April 5, 1912, I lived two miles west and north of Park City. I know Harry Cannon and also W. D. Storey. I have known Mr. Storey about ten years, and have known Mr. Cannon seven or eight years. I know Mr. Cannon's homestead entry. I was on that place after Mr. Cannon made his filing and before he made his final proof. I was there helping him fix his house. In the spring he filed on his land—that must have been in May. At that time I was living about a mile from there. From May, 1909, until January 24, 1911, I was on his place at various times. I helped Mr. Cannon put in a floor in the cabin, put in the windows, and put shutters on the windows. The shutters were hanging on hinges and fastened with buttons. There were window lights in the window, but I do not think they were there when Mr. Cannon took the place. The cabin was in good shape after we finished this work. It was about the same as the cabin of ordinary homesteaders. I have been in many homesteader's in this country. This cabin was about sixteen by eighteen I think. There was also a stable, chicken coop and corral on the place. There was a barn built there later on by Mr. Cannon. I was there when he was doing part of the work. I

think this barn was built after he made his proof. I was one of his witnesses at the final proof. The place was fenced. When Mr. Cannon put it up there was a fence on the west. Mr. Cannon afterwards fenced the north end—he enclosed it. I think the improvements made by Mr. Cannon was worth about a thousand dollars. I mean that after he had finished all of the improvements on the place were worth a thousand dollars. I never made any estimate of what each particular improvement would be worth. He had between nine and ten acres under cultivation. This land was below the Cove ditch. I don't think any of the land, except this nine or ten acres, was below the Cove ditch, or could be irrigated. Of the whole hundred and sixty acres I should judge sixty or seventy acres is plow land. I don't think at that time that any one could make a living on the place. If Mr. Cannon had broken it that summer I do not think he could have raised a crop that year. In 1909 or 1910 there was not very much dry land farming in that vicinity—they didn't think very much of it. It has only been the last four or five years that it has been practiced to any great extent. I saw Mr. Cannon on his place from the spring he filed on it up until he proved up. Sometimes I would see him there every week and sometimes every day. He would be there in the evening, sometimes in the morning. When I would leave he would stay there, and in the night, when I left, I left him there. He had in the cabin two stoves, bed and bedding, trunk, chairs, table and cooking utensils. He

had a cook stove and a heater both set up. I never ate any meals there. I was never there at meal times. I saw him there after he made final proof. After he made final proof he continued to live there about a year. After he left there I think he went to Washington. Mr. Cannon was engaged in breaking and training harness horses for different parties. I don't know what arrangement he had with Mr. Storey for the use of the barn and the feeding of these horses. I don't know the names of any of the parties whose horses he did train during that time. Between May 1, 1909, and January 24, 1911, I was in the trotting barn on the Storey place while Mr. ~~Cameron~~^{Cannon} was there. There was a harness room in that barn, but no bed room. There was no cot or bed in the harness room. The harness room was used for hanging harness in and for blankets for the horses. I saw a chest in there, which was used for horse blankets. I do not remember of Mr. Storey being absent from the place from May 1, 1909, up to January 24, 1911.

Cross Examination.

(By MR. WHEELER.)

My business is farming. I am farming my own place. From May, 1909, until January 24, 1911, I worked part of the time for myself and part of the time for different ones. Part of the time I worked for Mr. Storey—worked for him through the summer. I ate part of my meals at Mr. Storey's during the summer of 1909, and Mr. Cannon ate some of his meals there. That is my signature. I was down at the Can-

non place during the day time on some occasions, and I saw Mr. Cannon there during the day time quite frequently. During the summer of 1910 I saw him there in the day time. I think I saw him there during the month of July and August of 1910. Sometimes I would see him there in the evening and sometimes in the middle of the day. I saw him there frequently in the summer of 1910 during the middle of the day. I saw him there in the morning at various times, but not many. I saw him there in the morning the summer he filed, after he made his filing in 1909. I would see him there about eight or nine o'clock in the morning, and I saw him there a great many times at that time, and I saw him there a good many times in the evening. The windows had glass in them. It is not a fact that the boards were nailed across the windows, on the outside. In putting in the floor new boards were used. I saw them in the year 1909. It is not a fact that the horses were in the cabin for shelter and broke through the floor in 1910. It was not an old mattress in the cabin that had been there for years. I have not talked with anyone about this case. I have not talked to a soul—haven't discussed the case with anyone until I came on the witness stand. The only thing Mr. Cannon asked me was if I remembered what I said at the final proof. I was not in the court room last night when he was testifying, and did not talk to him about it at all. I said that there were about nine or ten acres under cultivation.

Q. At the time you testified before the land office

you said there was something like fifteen—about fifteen acres—of the entire tract under cultivation, “Q. The claimant has about fifteen acres of the entire tract under cultivation and he has raised a crop two seasons,” is that the statement you made at that time? A. About that. I don’t know exactly the number of acres. When I helped fix up the cabin I was working for Mr. Cannon. I helped harvest some of the crops—I was then working for Mr. Storey. It was Mr. Storey who cultivated this land, and Mr. Storey harvested a part of the crop. Mr. Cannon harvested a part; he harvested the potato crop. I don’t know what he did with it. I didn’t help him harvest the potato crop. I harvested the corn crop,—small corn—and it was taken up to Mr. Storey’s place. I said that I thought the improvements all together were worth thousand dollars. That did not include the barn, as it was built after he made final proof. There was some people that drove across the land some of the time Mr. Cannon was there. There was a gate way close to the house consisting of four wires that was closed, and there was a similar gate down at the other end. This road across there was a cut-off or a shorter way to get to Park City. I was in the cabin and saw the bed there. I was at Storey’s place through the summer most of the day, and had part of my meals there—my dinner and supper—taking my breakfast at home. Part of the time Mr. Cannon had his meals there at the same table with Mr. Storey and myself, but not all the time, and Mr. Cannon was there during the

summer of 1910 at different times during the day time in the afternoon and in the afternoon and around nine and ten o'clock in the morning I saw Mr. Cannon on his place. I saw him there on frequent occasions during the summers of 1910 and 1909.

Re-Direct Examination.

(By MR. JOHNSTON.)

I would see him on his place in the mornings and evenings and sometimes through the day. I would see him there when I would go through after wood at different times through the year, summer, fall and winter. I would make trips after wood once or twice a month, but I have seen Mr. Cannon oftener than that. When I would see him there in the day he would be working around at different things. I have seen him driving his horses about the ranch—off his ranch and to Mr. Storey. I mean, drive from Storey to his place and back. I talked to your partner, Mr. Coleman, about this case. In 1909 and 1910 there was not very many people living near where Mr. Cannon lived, and there would not be very many people going by his place on the way to Park City.

Re-Cross Examination.

(By MR. WHEELER.)

I saw him working around the place on various occasions when I was there. We would be fixing the corrals, first one thing and then another. He didn't have any garden. The old barn was fit to keep horses in, but I don't know that I ever saw a horse in it. I didn't put up the gate I spoke about, and it was not

put up at the time the barn was put up, but before that.

CHESTER A. ROBERTS, being first duly sworn as a witness for and on behalf of the defendant, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I am a son-of-law of Walter D. Storey and was his son-in-law in 1910. I am acquainted with Mr. Cannon and have known him about eight years. I know when he filed on his homestead in 1909. I was on his place some, he was on there when I went across. I knew he was there in the summer of 1909. I helped him move the stove and cooking utensils to that place. In the way of a bed he had a bedstead, spring mattress and bedding. I helped him take them out of the stable—the barn he had down at Mr. Storey. The stove he got at the same place. He had three stoves, a heating stove, cook stove and gasoline stove. He had a home made board table and a chair, and some cooking utensils. He got all of these from a stall in the barn at Mr. Storey's where he had them stored. That was the barn they call the trotting barn. I helped Mr. Cannon move them up to his homestead. No one else helped. I also took a trunk up but did not examine to see what was in it. This was not very long after he made his filing, but I don't know just how long after. That spring I saw two men throwing dirt

on and fixing the roof of his house—they were Mr. Cannon and Mr. Buster. When we moved the stuff in, the cabin had a new floor, not all new, it had been fixed up, but I don't know just when that was done. The cabin had two windows with window lights in them, and with board shutters hanging on hinges. I don't know just when the windows were put in and the shutters were put on. I have seen lots of homesteaders' cabins vicinity, or in that part of the state. Mr. Cannon's cabin was a good cabin—good as the average. He had the place fenced, not around it, but he had everything fenced except where the rim rock served as a fence. Stock could not get out or get in. He had a corral and a log stable. The stable and corral were on the place when he filed, but he built the fence himself. I don't think there was any fence there at all when he filed, but I could not say positively as to that. I went by the place several times between May 1, 1909, and January 24, 1911. I saw Mr. Cannon there during that time in the day time and once in a while at night, if I would be late getting from town. When I would see him in the day he was generally working with the horses, either using them or taking them out of the harness. I would see him driving at different places—sometimes on the road, sometimes he would be in Park City and sometimes on his place with the horses, and sometimes at Storey's place. I know he had some of Mr. Storey's horses and Mr. Deverill's and I guess he had some outside horses. I know he had some horses that didn't belong to Mr.

Storey, but I don't know whose they were. I don't know what the arrangement was between him and Mr. Storey in regard to the barn and the feeding of these horses. I never was in the cabin in the evening. I don't know ~~where~~^{where} Mr. Cannon slept and I could not say he slept there, but I always supposed he did—that is where his home was and I seen him up there in the evening. He had a bed with mattress to sleep on. I do not know of his having a home any where else during that time. There was a harness room in the barn on Mr. Storey's place, but no sleeping or bed room. That room was used to keep driving harness in. I do not know of any bed or cot in that room. I have seen a chest in there—it was a harness chest—I think that is what they call it. I never knew that Mr. Cannon kept any of his personal effects or clothing in that harness room. I was in that room frequently during those two years. During those two years I know that he ate at Mr. Storey's some time. I don't know whether he always ate at Mr. Storey's during those two years, as I wasn't there. He did not always eat there when I was there. I ate meals there when he wasn't present. I don't know anything about his being absent any of the two years he had this homestead. He might have gone but not that I knew anything about. He was not absent to my knowledge. I was living about four miles from this cabin; it was between my home and Park City. In going to Park City sometimes I would go by this place. The country was not well settled at that time, and there

was not much dry land farming in that vicinity at that time. At the time final proof was made I should judge there was about nine acres of this land—something like that—under cultivation, and probably sixty or seventy acres more that could be cultivated. None of this sixty or seventy acres could be irrigated. Whether or not if any of the sixty or seventy acres were cultivated in 1909 after Mr. Cannon went there, any crop could have been raised, that year, I cannot say. At that time the people did not go very strong on dry land farming and it was awful dry those years. I don't think there could have been much raised. In 1909 and 1910 there was a little dry land crop on the creek, but it didn't amount to anything. I believe it was a little dry in 1910. I was a witness for Mr. Cannon on his final proof. I never measured the nine acres in cultivation.

Cross Examination.

(By MR. WHEELER.)

I testified at final proof that the total value of the improvements was one thousand dollars—that is what I would place them at. At the time Mr. Cannon went on the place the corral, stable and house was there but I didn't know there was any fence there. The cultivation that was done there was done by father-in-law, Mr. Storey, and the crops were harvested by him. Mr. Buster, the witness who has just testified, worked there for my father-in-law during the year 1909, and part of the year 1910, worked most of the year 1909. While he was working there harvesting these crops I sup-

posed he was working for my father-in-law. I said that I helped move this bed and stuff down there. The floor that was in the building was not a new floor. There was a little in the corner—across the corner—that was the old floor. There was just about half of it—that much anyway,—that was new floor—new boards. I was in the cabin in 1910. It is a fact that in 1910 the floor was broken through in several places. I cannot say how long it remained in that condition, but it wasn't very long. I didn't assist in putting in the floor. I saw Mr. Cannon on his place in the day time 1909 and 1910, but I wasn't there very often. I would go through the place there and see him. During the months of July and August, 1910, I saw him on there in the day time. I don't know that in the months of July and August, 1910, he wasn't in that vicinity. I don't know whether or not during that period of time he was in Bozeman fifty-eight days. I was around the Storey place during 1910. I don't know that Mr. Cannon wasn't there something like two months of that summer—I didn't know that he was gone. I never kept any track of it—supposed he was there. I never had anything to do with Mr. Cannon. I swore before the land office that to my knowledge he was not absent during the fourteen months immediately preceding the time of final proof. He was there for all I knew—I supposed he was there. That is my signature.

Q. The question asked of you was "Q. Have claimant's family ever been absent from the homestead

since thus establishing residence thereon. A. No;" I said "Not that I know of." I read this over and I said, "Not that I know of," and they put it "No."

Q. "If there has been any such absence, give the dates covered by such absence, state who was absent and for what reason. A. No absence." A. That I know of, I added that. I read this over and spoke about it to the lady that took it down—I don't know what her name was—and she says, "That is right, that is the way we always fill them out," and I supposed that is all there was to it.

Q. In answer to question No. 8 here, you were asked, "Q. Are there any indications of coal or other minerals on the land, if so describe them," and your answer was, "A. Not that I know of." On that occasion they didn't merely put down, "No," but what your answer really was, was that right? A. That is the way I answered it. I didn't pass by this house a great many times, but I passed through there, would probably go through once a week, average that much anyway. In 1909 and 1910 there was a gate by the house so that you would have to get out and unhook it. He built the fence in 1909 and the fence—passing right in the same place, and the fence is right down there yet, and there was a gate there, up until last year there was. There was a gate there before Mr. Cannon built the new barn, but I don't know just when the gate was put there. I think Mr. Cannon built the barn in 1911, but I cannot say positively about that. At the time he made his final proof and I testi-

fied that the improvements was worth one thousand dollars, I did not take into consideration this new barn, but I did take into consideration the log stable that was there. That stable was there when he took the place up—but he fixed it up some. The stable was in such a condition that you could keep a horse in it in 1909 and 1910. I never examined it but I seen it.

Re-Direct Examination.

(By MR. JOHNSTON.)

At the time this floor was broken for a short time in 1910 this furniture was still in the house. When I was there at that time no one was with me. Mr. Cannon was working—might have been driving horses, I don't know where he was. When I saw the floor broken Mr. Cannon was not at the cabin with me. I don't remember whether or not I saw him in the cabin shortly before or shortly after that time. I saw him there after he made final proof. I don't know how long he remained there, but he was there around the place about a year I think.

W. D. STOREY, being first duly sworn as a witness for and on behalf of the defendants, testified as follows:

Direct Examination.

(By MR. JOHNSTON.)

I am one of the defendants. Have known Mr. Cannon about fifteen years. He worked for me before he made this filing. He began working for me I think

in 1902, and worked about three years. He then went away and I think stayed about two years. When he worked for me from 1902 to 1905, he was breaking colts. When he came back in 1907 he was handling horses and broke some colts for me also. When he came back in 1907 he brought some horses from Big Timber. From 1907 on he was there under this arrangement. He paid me five dollars per month for each stall for each horse he had there. I furnished the feed and he fed the horses. The five dollars per month covered stable room and feed for each horse. That arrangement continued all the time he had horses there, up until the time he left about April, 1912. During that time he did not train any horses for me, but he did break some horses for me. When he was breaking for me, I paid him a dollar a day for each horse he handled for me, but of course I don't know what other men paid him. From May 1, 1909, until January 24, 1911, the only place I knew of Mr. Cannon boarding was at my place. He did not eat there all the time, but all the meals I knew of he took at my place. I don't know where he ate when he wasn't eating at my place. The arrangement between us with regard to his eating at my place was that he was to pay for his board and he paid his board. It was paid to me on our settlement, but I cannot fix the date of our settlements. We generally settled up once a year, or may be once in six months. I don't know where Mr. Cannon slept from May 1, 1909, up to January 24, 1911. He was not sleeping on my place or at my place. He did not have a

bed room in this trotting barn. There is a room in that barn I fixed up for hanging harness in. During the time between May 1, 1909, and the final proof January 24, 1911, I think there was a bedstead in there, if I remember right. I do not know of anyone using that bed or bedstead during that period of time. If Mr. Cannon had been sleeping on my premises or in that barn during that time I think I would have known it. So far as I know, I don't know of any one sleeping there. I know there was a man sleeping in that barn at one time. I don't remember the year, but it was Frank Cannon, a brother of Harry Cannon. I never knew of Harry Cannon sleeping in that room. I had a bunk house there on the place with plenty of room for men to sleep. Harry Cannon slept in that bunk house when he first commenced working for me in 1902, but he did not sleep there to my knowledge during the time he had this homestead. I was on his homestead in the day time between the time of his filing and the final proof, but I don't remember that I ever saw him there. I was not there in the night time at all. I don't remember that I ever saw him when he was going to or coming from it, but I have seen him quite frequently on the road between my place and his homestead. At the time he made his filing there was a cabin, a log stable, a corral and some fencing on the place. I don't know just how much fencing there was, but there was a wire fence around there. I afterwards saw that the old fence was fixed up, but I don't know who did it. I don't remember now

whether or not there was any additional fence put while Cannon was there. I don't know whether or not Cannon made repairs on the house or the log stable while he was there. I was in the cabin before he made his filing, but was not in the cabin after the time he made his filing and before he left. From the time he made his filing up until I bought the place, I had never been in the cabin, and I know nothing about the kind of furniture he had there, if any. I farmed eight or nine acres of this land in 1909-1910. That land lies right below and was irrigated from what we call the Cove Creek. I had an agreement with Mr. Cannon that I was to have all I could raise for plowing and cultivating it—I got the crop. I think about fifty acres of that quarter that could be cultivated, but that is all above the ditch and could not be irrigated. I have lived down in that vicinity since 1890. In 1909 and 1910 there was no dry land farming at all in that vicinity. It was not thought crops could be successfully raised on a dry land farm at that time. I remember some people tried to dry land farm in 1909 and they made a complete failure of it—they did not raise anything. They did not try again in 1910. I had water with which to irrigate this small tract that I cultivated. I was familiar with the value of land of this character in that vicinity in 1909, 1910 and 1911. In the year 1911 and 1912 about the time I bought this land from Mr. Cannon. Land of this character was worth about two or two and a half an acre. That would be raw land without improvement—sold merely

as grazing land. This same kind of land had been sold a few years before by the railroad and about three years ago I bought a section right adjoining this on the north for two dollars and eight-nine cents per acre. I bought that land from the Northern Pacific Railway, and it was about the character of land as this land. This eight or nine acres lying below the Cove ditch is good land and is worth now perhaps a hundred dollars per acre with a water right. A water right in the Cove Ditch cost me thirty dollars per share. I got five-eighths inches and that is not enough for an acre—I figure an inch to the acre. The old timers an inch to the acres and the new men Bud O'Donnell half an inch, but you cannot irrigate under an inch. That eight or nine acres is worth more than all of the rest of the place together. At the time Mr. Cannon made his filing I had no agreement of any kind with him about buying the place, and I did not have any agreement with him during the period intervening and up to the time he made the final proof. The negotiations I had with him looking towards the purchase of this land was about the first of April, 1912, when Cannon wanted to sell me the place. I know why he wanted to sell. He showed me a letter he got from a party in Washington and the letter went on and read about this way, he says, "Harry, there is a good layout for you"—the letter wanted him to come there and take charge of a fair ground. I paid him one thousand dollars for the place and gave him my note for one thousand dollars due on demand. I paid that note

about May 15, 1912, through the Park City State Bank, paying the full amount of the note, plus interest. I do not know where the note is now. I make a practice of keeping my notes when I pay them, and kept this one around the house for two years, and supposed I had at this time, but I could not dig it up any place. I know the witness Imhoff who testified here. He sheared sheep for me at one time, but quit working for me in the spring of 1910 on the 15th day of April. I supposed we were lambing about that time. It takes about four weeks to lamb a band of six hundred ewes as a rule. He commenced working for me on the 28th day of October and worked until, until the 15th day of April, 1909, and then he was out of my employment until September, 1910. I do not know where he was employed and perhaps he was in that vicinity. I might have seen him and I might not. He was not herding sheep on the adjoining homestead, the adjoining homestead claim of Cannon. I did not furnish Cannon any of the money for filing on this land or any of the money for making any of the improvements, or for making commutation proof. There was a frame barn or stable on the land when I bought it, but I don't know when it was built. I took that barn down in May or June, 1912, along in the summer some time, and moved it to another place of mine, but that was after I purchased this place. I did not have any knowledge during all the time intervened between May 1, 1909, and January 24, 1911, that Mr. Cannon was making his home any where else excepting on his homestead. I

didn't not have any interest in the claim, or in the land he filed on during that time. I had no interest only in that little piece I farmed down there—I put in the crop. I have seen lots of homesteaders' cabins in this country during the years I have lived here. This cabin of Mr. Cannon compared very favorably with these homesteaders' cabins. So far as I know his residence on that land was as continuous as the residence of the ordinary homesteader on his homestead.

Cross Examination.

(By MR. WHEELER.)

I know that Mr. Cannon was away in Bozeman during the year 1910, but I cannot recall to mind now that he was away during the summer of 1909, although he might have been. Perhaps he did go to Bozeman in the summer of 1909 with some horses. I would not be positive he went away in 1909 or in 1910, but I know he was away some of the time a while. He had some of my horses in 1909 or 1910 at the ranch, but I don't think he took any of them to Bozeman. During 1909 and 1910 all the meals I ever saw him eat was at my place. I saw him there very frequently, morning, noon and night. Perhaps I am familiar with the race horse game, but not an old sport. No I will not say I ever owned a race horse, but I thought I did.

Q. Was he training race horses at the time he was up there at your place? A. That is a question I cannot answer. I don't think he ever trained a race horse. I don't know whether he ever trained many he thought were race horses—I cannot tell what he thought. He

trained them at the race track and took the same care of them as a man ordinarily takes of a race horse. I have heard of men training race horses, leaving the horses and not sleeping in the same barn with them, and of men training race horses and leaving them and not having anybody in the barn with them at all. When I built the harness in the barn and put the bedstead in there, I put it there for that very purpose of having somebody staying in the barn with the horses. When I put up that bed in the barn I did not put a mattress on it, and fix it up for a regular bed in that harness room. I don't think it had a mattress on it in 1909 or 1910, but there might have been for short period. I don't remember the year that Frank Cannon came out there. There was a bedstead in that room and I took some bedding from the bunk house and put it in there so he could sleep there. The bed was there in 1909 and 1910. Mr. Cannon did not have any trunk there to my knowledge. What clothes he would be wearing he might have there, kept his overalls and jumpers hanging up there. I don't think his trunk was there, but there was a boot trunk or horse chest there. I didn't notice any trunk besides that, and I don't think there was any there. I know Andrew Murray, but he never worked for me and was not a partner of mine. He occupied the Cannon land before I filed on it. I don't remember the date I filed on that land, but was about five years before I relinquished it.

Q. In other words, you held the land under this

homestead application for a period of five years and you relinquished it at nine forty in the morning and Mr. Cannon filed on it at nine forty-five? A. I cannot tell what time he filed on it. I was not present in the land office when he filed. I told him I was going to relinquish. I don't know who built the cabin on this land, but it was built there prior to the time I filed my application. At the time I filed my application I did not have six hundred and forty acres, I did not own any land, and I did not have any contract with the Northern Pacific Railway Company. I entered into the contract with the Northern Pacific Railway Company about two years ago. This property that I had at that time was in my wife's name, but this contract with the railroad company was not. The fencing on this land was not built by me and I do not know who built it. The fencing, cabin, corral and old log barn were there when I filed. I would not cross this land going to Park City, as my place was south of there, nearer to Park City, but I have crossed this land. This land joins my ranch. At the present time I own section 25 and section 24. I never was down at the cabin while Mr. Cannon had the land.

Re-Direct Examination.

(By MR. JOHNSTON.)

Q. Did you ever see Mr. Cannon at your place from May 1, 1909, to January 24, 1911, when he did not eat his meals at your place during the time he had this homestead filing. Was he ever there with his horses when he did not eat his breakfast, dinner and supper

at your place? A. During meal hours? Q. Yes.

A. No I don't remember he was ever there at meal hours when he was— Certainly he was there some time during the day when he didn't eat with him. I could not say how much of the time he ate his meals at my place and what portion of the time he ate them somewhere else. I did not live on that homestead after I filed on it. I did go up there and sleep a few times, but I could not say that I made that my home. I tried to talk my wife into going up there and live but she would not go up, and it was pretty lonesome sleeping up there alone, so I quit the homestead.

Re-Cross Examination.

(By MR. WHEELER.)

During 1909 and 1910 when Mr. Cannon was at my place he ate there. I think that when he was working there, when he had his horses at the barn during 1909 and 1910, that he ate more frequently at my place than he did any place else. That is my belief. As a matter of fact I expect he ate nearly all of his meals at my place when he was training the horses at my barn during 1909 and 1910.

Re-Direct Examination.

(By MR. JOHNSTON.)

During that time it was my belief that Mr. Cannon was sleeping on his homestead.

That the foregoing is a narrative of all of the testimony introduced and given on the trial of said action.

WHEREFORE complainant prays that the above and foregoing narrative of the testimony taken on the trial of said cause, be settled, approved and allowed by the above entitled court as a true, full and correct and complete statement of all of the evidence taken and given on the trial of said cause, for use on the appeal taken to the United States Circuit Court of Appeals for the Ninth Circuit.

B. K. WHEELER,
United States Attorney,
Solicitor for Complainant.

Service of the foregoing proposed statement of the evidence and a receipt of a copy thereof this 17th day of June, 1916, is hereby admitted and acknowledged.

C. ~~X~~ HARRIS,
W. M. JOHNSTON,
H. J. COLEMAN,
Solicitor for Defendants.

CERTIFICATE.

I, the undersigned, Judge of the District Court of the United States for the District of Montana, hereby certify that the foregoing statement of evidence is a true, complete and properly prepared narrative of all of the evidence adduced on the trial of the above entitled action, and I do further certify that the same has been duly served and filed as required by the rules of the court.

Dated this 10th day of July, 1916.

BOURQUIN,

Judge.

(Indorsed) Title of Court and Cause. Statement of Evidence on Appeal. Filed July 10th, 1916, Geo. W. Sproule, Clerk, by C. R. ~~Barlow~~, Deputy.

That on June 16th, 1916, Petition for Appeal and Order allowing the same was duly filed and entered herein in the words and figures following, to-wit:—

IN EQUITY—No. 53.

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

PETITION FOR AND ORDER ALLOWING APPEAL.

The above named complain~~ant~~ the United States of America, conceiving itself to be 'aggrieved by the decree entered herein on the 26th day of January, 1916, in the above entitled proceedings, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons speci-

fied in the assignment of errors which is filed herewith, and prays that an appeal be allowed and that a citation issue as provided by law, and that a transcript of the records and proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

B. K. WHEELER,
Solicitor for Complainant.

The foregoing petition is hereby granted and an appeal is allowed.

Dated this 16th day of June, 1916.

BOURQUIN,
Judge of said District Court.

(Indorsed) Title of Court and Cause. Petition for and Order allowing Appeal. Filed and Entered June 16, 1916. Geo. W. Sproule, Clerk, By C. R. Garlow, Deputy.

That on June 16, 1916, as Assignment of Errors was duly filed herein in the words and figures following, to-wit:—

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

ASSIGNMENT OF ERRORS.

The complainant in this action, in connection with its petition for an appeal herein, hereby makes the following assignment of errors, which it avers occurred in this cause:

1. The court erred in finding the evidence taken in said cause, on the trial thereof, was insufficient to sustain the allegations of the bill of complaint herein.

2. The court erred in finding the evidence taken in said cause, on the trial thereof, was sufficient to and did sustain the allegations of new matter in defense set forth in the answer herein.

3. The court erred in ordering a decree herein in favor of the defendants and against the complainant.

4. The court erred in entering a decree herein in favor of the defendants and against the complainant.

WHEREFORE, the said complainant, the United States of America, prays that said decree of said District Court of the United States for the District of

Montana, rendered and entered in the above entitled cause, be reversed.

B. K. WHEELER,
United States Attorney,
Solicitor for Complainant.

(Indorsed) Title of Court and Cause. Assignment of Errors. Filed June 16, 1916. George W. Sproule, Clerk, by C. R. Garlow, Deputy.

That on June 16, 1916, a Citation was duly issued herein which is hereunto annexed and is in the words and figures following, to-wit:—

*In the District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,
Complainant.

vs.

HARRY CANNON and WALTER D.
STOREY,
Defendants.

CITATION ON APPEAL.

UNITED STATES OF AMERICA—SS.

To HARRY CANNON and WALTER D. STOREY, Defendants and Appellees, and C. L. HARRIS and W. M. JOHNSTON, their Attorneys and Solicitors, GREETING:

You, and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, for the District of Montana, wherein the United States of America is appellant and Harry Cannon and Walter D. Storey are appellees, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and reversed and speedy justice should not be done to the parties on their behalf.

WITNESS, the Honorable GEORGE M. BOURQUIN, Judge of the United States District Court, District of Montana, this 16th day of June, 1916.

BOURQUIN,

Judge of the District Court of the United States,
for the District of Montana.

Service of the within citation and receipt of a copy thereof is hereby admitted this 17th day of June, 1916.

C. L. HARRIS,

H. J. COLEMAN,

W. M. JOHNSTON,

Solicitors for Defendants and Appellees.

(Indorsed) No. 53. United States of America, Plaintiff vs. Harry Cannon and Walter D. Storey, Defendants. Citation on Appeal. Filed June 20, 1916. Geo. W. Sproule, Clerk, by C. R. Garlow, Deputy.

That there after on July 10th, 1916, an order extending time to prepare and file record on appeal was entered herein as follows:—

*District Court of the United States, District of
Montana*

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

**ORDER EXTENDING TIME TO PREPARE RECORD
ON APPEAL.**

Upon good cause shown, it is hereby ordered that complainant and appellant in the above entitled cause, may have thirty days in addition to the time allowed by the rules of the court within which to have prepared and certified up to the Circuit Court of Appeals for the Ninth Circuit the record on appeal herein.

Dated this 10th day of July, 1915.

BOURQUIN,
Judge.

(Indorsed) Title of Court and Cause. Order extending time to prepare record on appeal. Entered July 10th, 1916, Geo. W. Sproule, Clerk, By C. R. Garlow, Deputy.

Thereafter on July 11th, 1916, appellant duly served and filed herein its praecipe for a transcript of the record on appeal herein, together with affidavit of service thereof which is in the words and figures following, to-wit:—

*District Court of the United States, District of
Montana.*

UNITED STATES OF AMERICA,

Complainant,

vs.

HARRY CANNON and WALTER D.
STOREY,

Defendants.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To HARRY CANNON and WALTER D. STOREY, Defendants and Appellees, and to H. L. HARRIS, W. M. JOHNSTON and H. J. COLEMAN, their solicitors:

The undersigned, solicitors for the complainant and appellant herein, hereby files and serves upon you, its praecipe, in conformity with the rules of court, indicating the portions of the record in the above entitled cause to be incorporated into the transcript on appeal herein, and which said portions of said record you are hereby notified the said complainant and appellant will incorporate and include in the record on appeal herein:

A.

Judgment Roll, consisting of:

1. Bill of Complaint.
2. The Subpoena.
3. The Answer of the Defendants.
4. The Decree.
5. The Certificate of the Clerk.

B.

The evidence introduced as incorporated in the statement of record on appeal.

C.

A memorandum of the opinion of the Court.

D.

Plaintiff's notice to settle statement of evidence on appeal.

E.

Statement of evidence on appeal prepared in narrative form in pursuance of the rules of court, and certified by the Judge of said court as a correct, true and properly prepared narrative of the evidence.

F.

Petition for Appeal and Order allowing same.

G.

Assignment of Errors accompanying the Appeal and Allowance.

H.

Citation on Appeal and affidavit of service.

I.

Order extending time for preparing and filing record on appeal herein.

J.

Copy of this Praeceptum.

B. K. WHEELER,

United States Attorney, District of Montana, and Solicitor for Complainant and Appellant.

United States of America,

District of Montana.—ss.

Frank Woody, being first duly sworn according to law, deposes and says: That he is a duly appointed, qualified and acting Assistant United States Attorney for the District of Montana; that C. L. Harris, W. M. Johnston and H. J. Coleman, solicitors for the defendants and appellees, are each and all residents of Yellowstone County, State of Montana, residing at Billings in said county and state; that on the 11th day of July, 1916, affiant served the foregoing praecipe on each and all of said solicitors for the defendants and appellees, by depositing in the United States Post Office, at Helena, in the County of Lewis & Clark, State of Montana, three copies of said praecipe, one thereof directed to each of defendants' and appellees' solicitors at Billings, Montana, with postage fully prepaid on each thereof.

FRANK WOODY.

Subscribed and sworn to before me this 11th day of July, 1916.

GEO. W. SPROULE,

Clerk U. S. District Court, District of Montana.

(Seal)

By C. R. GARLOW,

Deputy.

(Indorsed): Title of Court and Cause. Praecipe for Transcript of Record. Filed July 11, 1916, Geo. W. Sproule, Clerk. By C. R. Garlow, Deputy.

CLERK'S CERTIFICATE TO TRANSCRIPT OF
RECORD.

United States of America,
District of Montana.—ss.

I, George W. Sproule, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 107 pages, numbered consecutively from 1 to 107, inclusive, is a true and correct transcript of the pleadings, process, orders, decree, decision, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the praecipe of the appellant for said record on appeal, including said praecipe, and of the whole thereof, as appears from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of *Forty-eight & 89/100* dollars and have been made a charge against appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Helena, Montana, this *8* day of July, 1916.

Geo W. Sproule

Clerk United States District Court, District of Montana.

*By C. R. Garlow
Deputy Clerk*

(Seal)

IN THE
United States Circuit Court of Appeals
FOR THE
NINTH CIRCUIT.

UNITED STATES OF AMERICA,
Appellant,
vs.
HARRY CANNON and WALTER
D. STOREY,
Appellees.

APPELLANT'S BRIEF.

BURTON K. WHEELER,
United States Attorney.

HOMER G. MURPHY,
JAMES H. BALDWIN,
Assistant U. S. Attorneys,
District of Montana,
Solicitors for Appellant.

Filed

MAY 8 - 1917

F. D. Monckton
Clerk

IN THE
United States Circuit Court of Appeals
FOR THE
NINTH CIRCUIT.

UNITED STATES OF AMERICA,	}
Appellant,	
vs.	
HARRY CANNON and WALTER	}
D. STOREY,	
Appellees.	

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from the decree entered by the district court of the United States for the district of Montana on the 26th day of January, 1916, in favor of appellees and against the appellant and dismissing the bill of complaint. (Tr. pp. 27-28).

The suit in which said decree was entered was brought by appellant for the purpose of having

cancelled and set aside on the ground of fraud a patent for lands theretofore issued to Harry Cannon, one of the defendants named therein, the bill of complaint (Tr. pp. 2-18) having been filed on April 16, 1915. It is alleged in the bill of complaint that appellant was on and prior to May 1, 1909, the owner in fee of certain public lands in the county of Stillwater, in the Billings land district, in the state of Montana (Tr. pp. 2-3); that appellee, Cannon, on May 1, 1909, entered said land as a homestead by making and filing in the United States land office at Billings, Montana, his written application and affidavit to enter said lands, in which application and affidavit Cannon stated that his application to enter said lands as a homestead was made honestly and in good faith for the actual settlement upon and cultivation of said lands, and that he did not enter said lands for speculation but in good faith to obtain a home for himself; that said Cannon paid the legal fees to the Registrar and Receiver of the United States land office at Billings and the Register and Receiver, relying upon and believing said statements of Cannon to be true, accepted and filed said application, allowing said entry (Tr. pp. 2-5); all of which is admitted by the answer of defendants (Tr. p. 21); that the said application and affidavit of said Cannon was false and the application to enter was not made in good faith for the purpose of actual settlement and residence upon and cultivation of said lands by said Cannon and that Cannon did not intend to comply with the homestead laws of the

United States, and that said entry was made with intent to fraudulently acquire title to said lands without either settlement or residence upon or cultivating thereof by Cannon, and the statements contained in the application were made for the purpose of deceiving the officers of the United States, and did deceive them (Tr. pp. 5-6); this is denied by defendants' answer (Tr. p. 21); that Cannon availing himself of the provisions of Section 2301 of the Revised Statutes of the United States and the Acts of Congress amendatory thereof, on January 24, 1911, submitted final proof to the officers of the United States land office at Billings by himself and two witnesses, showing that he, Cannon, had actually established residence upon said lands during the month of May, 1909, and had resided thereon continuously and had never been absent therefrom after May, 1909, except for a period of two weeks in December, 1909, and had cultivated twelve acres thereof and placed improvements thereon consisting of a log house, barn, canals, and fencing (Tr. pp. 6-9); that the officers of said Billings land office accepted said proof and relying upon it and believing it to be true, accepted payment for said lands and issued a final certificate therefor, and thereafter on June 26, 1911, the United States issued its patent for said lands to Cannon; that the acceptance of said proof and all acts on the part of officers of the United States in and about the said entry and issuance of said patent were based upon said proof in the belief that the same was true and in reliance

upon the good faith and truthfulness of said Cannon and his final proof witnesses (Tr. pp. 6-11); all of this is admitted by the answer of defendants (Tr. p. 21); it is further alleged in the complaint that the final proof submitted by Cannon was false, fraudulent and untrue and known by Cannon and his witnesses to be such and was made with intent to deceive and did deceive the officers of the United States, and to fraudulently procure the issuance of said patent to said lands and the purpose for which same was made was accomplished (Tr. pp. 11-14); this is denied by the answer (Tr. p. 22); it is also alleged the appellee Storey purchased said lands from Cannon and received a deed therefor on August 5, 1912, with full knowledge of the fraud practiced by Cannon in securing patent thereto and that said deed is a cloud upon appellant's title and that Storey is not an innocent purchaser in good faith for a valuable consideration (Tr. pp. 14-15); this is denied by defendants' answer and defendants allege Storey to be an innocent purchaser in good faith and that he paid Cannon a valuable consideration of \$1,000 for it (Tr. p. 23).

The cause was tried to the court on the complaint and answer on the 24th day of December, 1915, and testimony on behalf of plaintiff and defendant was introduced and after argument of counsel the cause was by the court taken under advisement and thereafter on January 22nd, 1916, the court rendered its decision herein in favor of appellees (Tr. pp. 28-29), and upon such decision a decree was

duly entered herein on January 26, 1916 (Tr. pp. 26-27) in favor of appellees and against appellant dismissing said bill of complaint.

Thereafter, to-wit, on June 16, 1916, appellant filed in the district court of the United States for the district of Montana its petition for an order allowing an appeal from said decree, and said district court granted said petition and allowed this appeal (Tr. pp. 98-99); that on said 16th day of June, 1916, the said petition for an appeal was filed and granted as aforesaid, appellant purchased and filed in said district court its assignments of error herein (Tr. pp. 100-101):

ASSIGNMENTS OF ERROR.

1. The court erred in finding the evidence taken in said cause, on the trial thereof, was insufficient to sustain the allegations of the bill of complaint herein.

2. The court erred in finding the evidence taken in said cause, on the trial thereof, was sufficient to and did sustain allegations of new matter in defense set forth in the answer herein.

3. The court erred in ordering a decree herein in favor of the defendants and against the complainant.

4. The court erred in entering a decree herein in favor of the defendants and against the complaint.

ARGUMENT.

As the appellant contends that the evidence introduced on the trial of said cause was sufficient to sustain the allegations of its bill of complaint and insufficient to sustain the allegations of new matter in defense set forth in the answer herein, we shall take up and consider the first and second specifications of errors assigned that “the court erred in finding that the evidence taken in said cause at the trial thereof was insufficient to sustain the allegations of the bill of complaint therein,” and the evidence was sufficient to sustain the allegations of new matter in defense set forth in the answer, herein, jointly, it naturally following that if the court did so err, then error was also committed by the court in ordering and entering the decree dismissing appellant’s bill of complaint as specified in the third and fourth assignment of errors.

Before the court evidence was introduced on behalf of the appellant for the purpose of proving the allegations of its bill of complaint to the effect:

First: That the entry of said land, the final proof thereof and the title acquired thereto by the defendant, Harry Cannon, were for the purpose of perpetrating a fraud upon the appellant and fraudulently acquiring title to said land for the benefit of the appellee, Harry Cannon, without any intent on the part of Cannon to comply with the land laws of the United States, no compliance with such laws ever being had on the part of Cannon.

Second: That the appellee, Walter D. Storey, knew of the fraud perpetrated upon the appellant by the defendant, Harry Cannon, in connection with the acquiring of the title to said lands by the defendant, Harry Cannon, and was not an innocent purchaser thereof in good faith for a valuable consideration.

We deeply appreciate that in cases of this kind where there is sufficient evidence to sustain the findings of the trial court, such findings will not be disturbed on appeal unless there is a lack of proof to sustain the findings or the proof is such that it greatly preponderates against the findings made. In this case, we contend that the evidence introduced on behalf of appellant is such that it meets the requirements of the rule laid down by the Supreme Court of the United States in Maxwell Land Grant case, 121 U. S. 325, to the effect that the evidence in a case to cancel a patent to land must be clear and convincing. If courts are to grasp at the flimsy stock defenses that unscrupulous land-grabbers seem always to have on hand and are so prone to unblushingly present to courts, as has been done in the case at bar, then indeed are the great natural resources of this nation to be bid a fond farewell for it will surely foster a contempt for the law and observance of the few simple requirements laid down by Congress whereby our citizens are given a share of this nation's public domain. Congress in its wisdom has outlined a course of action on the part of its citizens which it says should be followed

in order to obtain patents for land, but the laws that state what an entryman shall do seem to be more honored in their breach than observance. The iniquitous practices of large land-holders have become so obnoxious that for some years past we have seen grown up a bureau of investigation, the sole duty of which is to see that the donor of our virgin soil is not defrauded but also to struggle vainly against the multitude of schemes and devices continuously invented and used to dodge the few plain and simple requirements of law. The practices so frequent during the past half century or more in those regions where public land was abundant, throughout this country, by which this nation has been induced to part with a major portion of its public lands, were generally considered quite proper by those who came in contact with questionable practices, but in this day there is no longer the general indifference as to what is being done in land matters. Hence we urge that the evidence in this case as outlined here by us and fully shown by the transcript is of the character and kind which does not sustain the findings of the trial court, but which, on the other hand, requires the granting of the relief prayed for in the complaint.

We contend the evidence shows that Cannon never intended to comply with the homestead laws when he filed on the land in question, and furthermore he falsely and fraudulently swore to and submitted a final proof corroborated by two witnesses, which he and his witnesses knew to be false and

fraudulent, and which imposed upon and deceived the officers of the United States having to do with the passing upon the sufficiency of such proof and issuance of patents, and because of such deception practiced by Cannon, the patent was unlawfully obtained.

Considering the testimony in the order of events connected with the fraud we find:

The records of the Billings land office show that the land in question was entered first by one, Andrew H. Murray, which entry was relinquished; that Walter D. Storey, one of the appellees here, filed a homestead entry upon the land July 5, 1904, and this entry was cancelled by a relinquishment of Storey filed at 9:40 A. M. May 1, 1909 (Tr. p. 50).

Cannon himself says that he was with Storey in the land office when Storey relinquished this land,—they had gone to Billings together—Storey to relinquish and Cannon to file on this land (Tr. p. 64).

Story admits he held the land five years after Andrew Murray had an entry on it before relinquishing it; he told Cannon he, Storey, was going to relinquish (Tr. pp. 94-95).

Cannon worked for Storey from 1902 to 1905, and from 1907 until April, 1912, Cannon was training horses at Storey's place under an agreement (Tr. pp. 63-88); Cannon boarded at Storey's, paying \$4.50 per week for his meals from 1907 until 1909 (according to one of his (Cannon's) versions) (Tr. pp. 63-64), but on page 60 of the transcript

Cannon admitted he boarded at Storey's paying \$4.50 per week for the board; this latter statement by Cannon is corroborated by Storey's testimony (Tr. p. 88, lines 18-28), which is:

“From May 1, 1909, until January 24, 1911, the only place I knew of Mr. Cannon boarding was at my place. He did not eat there all the time, but all the meals I knew of he took at my place. I don't know where he ate when he wasn't eating at my place. The arrangement between us with regard to his eating at my place was that he was to pay for his board and he paid his board. It was paid to me on our settlements, but I cannot fix the date of our settlements. We generally settled up once a year, or may be once in six months,”

and again Cannon admits he boarded one-fourth of the year 1909 after May 1 at Storey's (Tr. p. 67, l. 20-23).

The foregoing admissions on the part of the defendants are corroborative of the testimony of the plaintiff's witnesses who testified they never saw Cannon in the house or any signs of it being occupied by a human being from May 1, 1909, to January 24, 1911. Indeed, the descriptions show the house was unfit for human habitation.

See the testimony of the witness Imoff (Tr. p. 33, lines 27 et seq.) Imoff's testimony was that from March 1, 1909, until January, 1911, he was employed by the defendant Storey; that Storey's home was one and one-half miles from Cannon's homestead;

that Imoff herded sheep between Storey's land and Cannon's homestead, and from the first of May, 1909, until Imoff left in June he had Storey's sheep on the Cannon land, camping on the Cannon place about three or four hundred yards from Cannon's cabin; that Storey moved the sheep from Storey's place to Cannon's; Imoff had seen that cabin since 1908 when he first worked for Storey; that in 1908 and 1909 the door of the cabin was open, floor bad; cattle and horses had been in it; roof leaky, not fit to live in, is clear and convincing, although the trial judge seemed to think that Imoff's and the testimony of appellant's other witnesses was entirely reconcilable to that of the testimony introduced by appellees, and only showed a lack of physical presence but not a lack of continuous residence.

The testimony of Imoff and others shows ample opportunity on their part to observe the homestead with such frequent and close observations of the house, as disclosed by the testimony, it can hardly be said that a "continuous residence" was maintained by Cannon and the requirements of law, Section 2301, of the Revised Statutes, complied with. After Imoff left Storey's in June, 1909, he saw the place twice a week until after final proof, passing along a road that goes within twenty-five steps from west side of cabin, having to pass it in going to his town from where he then lived; he also saw Cannon at Storey's place several times from May 1 to June, 1909, and saw Cannon eat meals at Storey's (Tr. pp. 32-37).

The witness W. H. Harrison lived north of the Cannon homestead from May 1, 1909, until January 24, 1911, and passed over it on the road that went within twenty or twenty-five feet from the cabin twice a week during that period, both in the day and in the night time. Harrison never saw anyone at the cabin and never saw smoke or other signs of anyone living in the cabin, or tracks in the snow around the house. He saw Storey's teams plowing. When Cannon filed, the condition of the cabin was as Imoff had described it (Tr. pp. 37-41).

Miss Robin Harrison testified that from May 1, 1909, until January 24, 1911, she passed the house on Cannon's place, on the same road, twice a day as she went to and from school, which would be five days a week, and she never saw anyone living there, and only saw Cannon there once building a barn; that she looked into the cabin once and saw a table, stove, and bed but saw no groceries and saw the floor broken down in one place; from the general appearance of the place about the house or inside it appeared that no one had been living there; that school began in September each year and ended in May of the next (Tr. pp. 41-44). This testimony is corroborated by the witness Mrs. Harrison (Tr. pp. 54-55), and the witness Loeffler (Tr. pp. 55-56).

Mrs. Kirk testified that part of the time between May 1, 1909, and January 24, 1911, she and her husband lived near Story's house, that she cooked a great deal of the time at Storey's house and saw Cannon eating his meals every day there with

Storey whenever she was cooking, which was off and on between those dates; that Cannon stayed in the trotting barn of Storey's and kept his clothes there, had his bed there; she washed Cannon's clothes at Storey's, especially from March, 1910, to September, 1910, she went to the Storey house every day and every time she took her meals there she saw Cannon; that Mr. and Mrs. Storey called the room in the trotting barn "Cannon's room" and the witness saw Cannon's clothes in it. (Tr. pp. 45-49).

August Kirk testified that he went to work for Storey in the spring of 1909 and Cannon was breaking horses there and roomed in the trotting barn; that he, Kirk, planted crops on Storey's place under Storey's orders and Story paid for it; that Cannon ate his meals at Storey's with Storey and himself the first year Kirk was at Storey's; saw the homestead cabin once or twice a week during the winter of 1910 and 1911 and no one lived in it; that Cannon was away from Storey's with horses the summer of 1909 and again the summer of 1910 (Tr. pp. 50-53).

This testimony for plaintiff finds abundant corroboration in the testimony of the defense. Cannon himself says he found the house not in liveable order and put in a floor, a window and covered the roof (Tr. p. 57). He ate most of his meals at Storey's and paid Storey for them (Tr. pp. 59-60), which corroborates the Kirks; that he was absent fifty-two days from the homestead in the summer of 1910 (Tr. p. 60), but it is to be observed he swore in his final proof as admitted in the pleadings that he was

not absent except for two weeks in December, 1910 (Tr. pp. 8, 21).

The final proof witness Buster testified for appellees, says he helped Cannon fix up the place but his entire testimony is a maze of glittering generalities and not entitled to any credit. He says he saw Cannon on the homestead between May, 1909, and January, 1911, sometimes once a week and sometimes every day, but he never saw Cannon eat a single meal on the homestead (Tr. p. 76), which indeed is incredible if we are to believe him. Indeed, he states that the improvements not including the new barn which Cannon built were worth \$1,000 (Tr. p. 79, lines 15-18), but in this connection remember the record shows the land and improvements were all sold in 1912 for \$1000.

Chester A. Roberts, the other final proof witness, is a son in law of Mr. Storey's, hence is interested more or less in the litigation. He saw Cannon once in a while at the homestead, but Roberts was never in the cabin in the evening and did not know where Cannon slept; but knew he ate at Storey's sometimes (Tr. pp. 81-84); on cross examination he also testified the improvements were worth \$1000 (Tr. p. 84); that the floor in the cabin was broken through in several places in 1910 (Tr. p. 85, lines 7-10)—this is evidence corroborating Mrs. Harrison (Tr. p. 42, line 24) he further states he supposed Cannon was residing on the homestead from May, 1909, to January, 1911 (Tr. p. 85, line 24-28), but he did not know it.

Walter D. Storey, one of the appellees, merely states that Cannon did not know that Harry Cannon slept in the bunk house or in the harness room on the Storey ranch while he had the homestead (Tr. p. 89, lines 1-18); that there was a bed in the harness room but Storey did not know of anyone using it from May, 1909, to January, 1911 (Tr. p. 89, lines 1-6), and Storey never saw Cannon on his homestead (Tr. p. 96, lines 15-21); indeed, we find Storey states:

“During 1909 and 1910 when Mr. Cannon was at my place he ate there. I think that when he was working there, when he had his horses at the barn during 1909 and 1910, that he ate more frequently at my place than he did any place else. That is my belief. As a matter of fact I expect he ate nearly all of his meals at my place when he was training the horses at my barn during 1909 and 1910.”

In view of the foregoing testimony, we respectfully submit it shows conclusively by appellant's proof, corroborated as it is throughout by appellees' proof, that Cannon never established a residence on the land in question, and the patent should be cancelled. The purchase of the land by Storey was certainly with full knowledge on his part that Cannon had not complied with the law as to residence, etc. Indeed, Storey was familiar with the land, had himself used it for five years under a homestead entry of his own prior to Cannon's filing without any attempt on his, (Storey's) part to live on the

land, and further what cultivation was done during Cannon's time was by Storey. Hence we submit that the rule laid down in the case of *Cooper v. U. S.*, 220; Fed. 871-872, should apply here and Storey's purchase be held to be one not innocent and in good faith or for a valuable consideration.

For men like Storey cannot truthfully say that they know nothing of conditions when he did know Cannon, the land itself, having farmed and grazed part of it, and had Cannon paying board at Storey's place throughout the period involved.

We respectfully submit the decree of the trial court should be reversed and one cancelling the patent entered.

B. K. WHEELER,
United States Attorney.

HOMER G. MURPHY,
Assistant U. S. Attorney.

JAMES H. BALDWIN,
Assistant U. S. Attorney.
District of Montana.

IN THE
United States
Circuit Court of Appeals
FOR THE
NINTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant,
vs.
HARRY CANNON and WALTER
D. STOREY,
Respondents.

BRIEF OF RESPONDENTS

C. L. HARRIS and
JOHNSTON & COLEMAN
Billings, Montana,
Attorneys for Respondents.

Filed

MAY 17 1917

F. D. Monckton,
Clerk.

IN THE
United States
Circuit Court of Appeals
FOR THE
NINTH CIRCUIT

UNITED STATES OF AMERICA,	}
Appellant,	
vs.	
HARRY CANNON and WALTER D. STOREY,	
Respondents.	}

BRIEF OF RESPONDENTS

In this case there are two questions presented by the brief of the counsel for the appellant. The first is whether the appellee Cannon perpetrated a fraud upon the government in his entry, final proof and acquirement of title to the land involved in this cause. The second is whether the appellee Walter D. Storey was an

innocent purchaser for a valuable consideration.

Counsel for the government admit in the beginning of their argument that the findings of the trial court on the questions of fact will not be disturbed on appeal unless the proof submitted greatly preponderates against the findings made. In this case the lower court held that the allegations of fraud in the complaint were not proven and the allegations of new matter in the answer were proven. Federal courts have held without exception, that:

“The legal presumption is that the finding and decree of a court of chancery are right, and they should not be disturbed or modified by an appellate court, unless an obvious error has intervened in the application of the law or some grave mistake has been made in the consideration of the facts.”

Furrer vs. Faris, 145 U. S. 132.

Kimberly vs. Arms, 129 U. S. 512.

Tilghman vs. Procter, 125 U. S. 136.

Stearns-Rodgers Mfg. Co., vs. Brown,
114 Fed. 939.

Manhattan Life Ins. Co., vs. Wright, 126
Fed. 82.

It is also a well established rule of law that:

“In such a case, the respect due to a patent, the presumption that all the pre-

ceding steps required by the law have been observed before its issue, and the immense importance of stability of titles dependent upon these instruments, demand that suit to cancel them should be sustained only by proof which produces conviction.”

Wright-Blodgett Co., vs. U. S., 35 Sup. Ct. Rep. 339.

Colorado Coal & Iron Co., vs. U. S. 31 L. Ed. 182.

U. S. vs. Maxwell Land Grant Co., 30 L. Ed. 949.

I.

Does the evidence in this case so strongly preponderate against the appellees that it produces a conviction that the acts of Cannon in entering, submitting final proof, and securing title to the land in question were done with an intent to defraud the government and to overthrow the presumption that the findings of the district court were correct? It is contended by counsel for the government that the entry was fraudulent and void in its inception, presumably on the ground that the entry was made for the benefit of the appellee Storey. This contention is based on the following grounds:

1. That prior to 1909 Cannon had been in the employ of Storey;

2. That prior to 1909 Storey had made homestead entry on this tract of land;

3. That as soon as Storey relinquished to the government Cannon filed thereon;

4. That after issuance of patent Cannon sold the land to Storey.

On these points there is no dispute in the evidence. Both Cannon and Storey admit the truth thereof, but we submit that these facts alone absolutely fail to prove any understanding or agreement between Cannon and Storey as to the future disposition of the land, entered into before the issuance of the patent to Cannon. Admit, if we will, that the facts relied upon by the government might give rise to a suspicion of fraud, it must still be admitted that they are just as consistent with an entire honesty of purpose. Not only did the government fail to prove the existence of any agreement or contract between the appellees, but the uncontradicted testimony in the case conclusively proves that there were none. No witness testified to the existence of such an agreement; while Mr. Cannon and Mr. Storey both deny that any such agreement was ever made or contemplated (Tr. p. 91). Aside from this testimony, we believe that the facts developed in the case are utterly irreconcilable with the theory of the government on this point. The most significant of these facts is that while Mr.

Cannon made proof on his claim in January, 1911, and received patent therefor in June, 1911 (Tr. p. 73), he did not sell this land to Mr. Storey until in April, 1912 (Tr. pp. 62, 74, 91). The sale and transfer were made fifteen months after Mr. Cannon submitted his final proof, and nearly a year after patent for the land was issued to him. As Cannon states, he never thought of leaving or disposing of his homestead until early in April, 1912, he received what he deemed to be an advantageous offer of employment in the State of Washington (Tr. p. 62).

After Cannon made his final proof he still continued to make his home at the claim, and in the latter part of 1911, or early in 1912, nearly a year after he made final proof, he constructed a barn on the homestead, which he paid for and built himself (Tr. pp. 61, 64, 72, 77, 86). These facts are undenied and uncontradicted by any evidence in the case, and we contend, are absolutely inconsistent and irreconcilable with the theory of the government on this point.

Counsel, in their brief, have seen fit to enter into a rather extended discussion of the practices of "unscrupulous land grabbers" and large "land holders" in an apparent endeavor to put the present controversy on a plane where it most manifestly does not belong. The land

covered by the entry of Mr. Cannon consists of one hundred sixty acres of arid prairie. No witness testified that it was worth in excess of the sum of one thousand dollars paid by Mr. Storey. There is nothing in the case to indicate that either Mr. Cannon or Mr. Storey are unscrupulous land grabbers or large land holders, and nothing to call for the oratorical flight upon this point of counsel for the government. It is true that a bureau of investigation has grown up in the department of the interior, the "sole duty of which is to see that the donor of our virgin soil is not defrauded," and the result has been that some of the agents of this bureau, feeling that it was incumbent upon them to produce some results from their investigations, and thus, at least in appearance, justify their continuance upon the government pay roll, have in many instances, in this locality at least, instigated the commencement of actions such as this, where the case of the government was glaringly devoid of any proof beyond the suspicions of its witnesses.

II.

There can be no doubt from the testimony as a whole that when Mr. Cannon made entry on this homestead he at once proceeded to put the house in a condition fit for habitation; that he fenced the land and rebuilt the barn there-

on. The only witness for the government who testified to being in the cabin between May 1, 1909, and January 21, 1911, was Robin Harrison, who admitted that the house was fairly well furnished. Mr. Cannon himself testified that he had a suitable outfit there for keeping house: "I had three stoves, a heating stove, and I had a good bed, springs and mattress and a good cover. I had a table, dishes, cooking utensils, my clothing and what stuff I have." (Tr. p. 58.) The testimony of Mr. Cannon on this point is amply corroborated by that of A. E. Buster at pages 75-77 of the transcript, and Chester A. Roberts at pages 81-83 of the transcript.

The value of the improvements on this claim at the time of final proof is placed at from three or four hundred dollars to one thousand dollars. Mr. Cannon himself fixed the value of the improvements made by him at about \$300.00 (Tr. p. 64). No witness for the government testified as to the value of these improvements. Therefore, we assume that there can be no question that the fraudulent acts of defendant Cannon could not consist in the failure to make the improvements required by law.

The testimony is undisputed that Mr. Cannon secured the cultivation of about ten acres of his land by Mr. Storey in exchange for the

crop raised thereon (Tr. p. 58). It is not contended by counsel for the government that this cultivation did not comply with the requirements of the law and the rules of the department with reference thereto.

III.

This leaves only one question to be considered; that is, whether or not Mr. Cannon complied with the law of the United States and the rules of the department of the interior with reference to residence upon his claim. It is upon this point that counsel for the government lay the greatest stress in their brief.

In considering the argument of counsel for the government upon this point, and a review of the evidence thereon, it is very apparent that counsel have completely misinterpreted and distorted the effect of a great deal of the testimony. Mr. Imhoff was not employed by Mr. Storey from March 1, 1909, until January, 1911, as stated in brief of appellant. Imhoff did state that **between** those dates he was employed by Mr. Storey. At page 32 of the transcript his testimony appears that: "I commenced working for Mr. Storey in October, 1908, and worked for him until June, 1909." Mr. Cannon made his entry May 1, 1909. Therefore, Imhoff only worked for Mr. Storey one month after Cannon made his entry. It

is true that he testified that in the year 1908 the door of the cabin on the land was open, the cabin was in poor condition and cattle had been in there; but in the year 1908 Cannon had not made his entry and certainly the condition of the cabin before the entry was made would be of no importance in this hearing. Mr. Imhoff does testify at page 34 of the transcript that after May, 1909, the door was not open and shutters on hinges had been put on the windows. He never happened to see Mr. Cannon on the land in question, but, as he admits, he "did not pay much attention to it." At page 36 of the transcript he states that he saw Mr. Cannon building a barn on the premises and further states at page 37, "So far as I know, he might have resided on his homestead, taken his meals there, and slept there and made it his home to the exclusion of one elsewhere."

While Mr. Harrison testified that he passed the claim two or three times a week during the period from May 1, 1909, to January, 1911, and never saw Mr. Cannon there, at page 40 of the transcript he says: "I never investigated the house. So far as I know, it might have been furnished, might have been plumb full. At any time I passed by there Mr. Cannon might have been in the house. I would not say he was not. I never inquired or looked in there to see."

Miss Robbin Harrison was the next witness for the government. At the time of the trial in 1916 she was 17 years old. In the years 1909 and 1910, the period involved in this controversy, she was a child of ten or eleven years of age. She testified that she went by the cabin on her way to and from school and never saw anyone around there, except once, when she saw Mr. Cannon building a barn. At one time, which she was unable to fix, she looked in the cabin and "saw a table in there and a stove and a bed. There was some dishes in the cabin, enough, I guess, for one person to use." (Tr. pp. 43-44.) This witness did not pretend to say that Mr. Cannon actually did not reside on this claim or that he had any home elsewhere.

The next witness, Mrs. Maud Kirk, at page 47 of the transcript, testified: "From the 21st of January, 1911, until May I was there nearly every day and that is the time when Mr. Cannon was living in the room in the trotting barn. Prior to that time I could not swear that he slept there all the time." Of course Cannon submitted his final proof in January, 1911; so whether or not he stayed in the barn or Storey's place after he had submitted proof is immaterial. At page 48 of the transcript she testified: "I don't know but what some other person working for Mr. Storey occupied

this bed in the trotting barn.” The witness concluded her testimony on page 48 of the transcript with the statement: “I am just giving you what I think, what I suppose, not what I know.” The truth of this last statement by the witness is apparent when her whole testimony is read. She based practically every statement made therein on what she supposed or thought, not upon what she knew. As a matter of fact, she did not know where Mr. Cannon was staying.

Mr. Kirk, at page 53 of the transcript, said: “I said that Mr. Cannon roomed in this trotting barn, but did not see him sleep there.
* * * I was never up to his cabin during the night time, and do not know whether he ever slept in the cabin or not. I don’t know where he slept a single night from May 1, 1909, to January 24, 1911.”

Mrs. Harrison and Mr. Loeffler both testified that while they had been by the cabin on the Cannon entry at various times, they never saw anything to indicate that anyone was living there. Neither one of them testified that they had ever been up to the cabin or pretended to know where Mr. Cannon did live.

Certain of the above witnesses testified that Mr. Cannon ate a good many of his meals at the Storey place during the period from May, 1909, to January, 1911, and that he worked

around the horses on the Storey place and had a trunk in the Storey barn. These facts are not disputed by the witnesses for the appellees. Many of the witnesses stated that Mr. Cannon was in the employ of Mr. Storey, taking care of his horses. The evidence conclusively shows, however, that Mr. Cannon was in the horse business, training horses for any person who wished to employ him; that he rented the Storey barn for an agreed consideration; and that during the period from 1909 to 1911 he handled the horses of many different owners. During that time he handled some horses for Mr. Storey upon the same basis and for the same consideration that he handled other people's horses (Tr. pp. 58, 59, 88). Many of the witnesses referred to a trunk of Mr. Cannon's which was kept in the "trotting room" of Mr. Storey's barn. All of them referred to it as Mr. Cannon's trunk, and assumed that it contained all of his personal belongings. None of them, however, testified as to the actual contents. Mr. Cannon, himself, Mr. Storey, and other witnesses for the defense testified that this trunk contained the equipment and tools necessary for the care and training of the horses that Mr. Cannon was handling. And Mr. Cannon further testified that it did not contain any of his clothes or personal belongings at all (Tr. pp. 67, 94).

We believe that if this court were to consider nothing but the evidence of witnesses for the government that it would be obliged to find that the government had absolutely failed to make out a case. But when the court goes further, and considers the testimony given by the witnesses for the defense, certainly the least that it can say is that there is no preponderance against the testimony submitted by the defendants, and that therefore the findings of the trial court should not be disturbed on this appeal. It is true that Cannon's work took him away from his claim during most of the day, but as testified by witnesses for the defense, his claim was on dry land. At that time, in 1909 and 1910, no person thought that this dry land could be profitably cultivated, and about the only use to which it could be put was for stock or sheep raising. Mr. Cannon testified that he wished to acquire title to the land to use the same for stock raising purposes. He could not make a living from the land, and therefore was justified in seeking such employment and occupation as would insure a living for him. He did spend several hundred dollars improving the claim and continued to make the claim his home from May, 1909, until long after he had submitted final proof and received patent therefor.

We therefore contend that the record in this

case affirmatively shows that Mr. Cannon substantially complied with every requirement of the law and the department of the interior; that he was entitled to patent upon the place; and that no fraud was practiced by him in entering, making final proof or acquiring title to the land involved.

IV.

We believe that the evidence in the case conclusively establishes that Cannon acted in entire good faith in making his entry, submitting final proof and acquiring title to the land in question.

If, however, this court were to find that Cannon was guilty of fraudulent conduct in any particular, the question would then arise as to whether Storey took any part therein, or whether he was an innocent purchaser, for value. It is not denied by the government that Storey paid a valuable consideration when he acquired title to this land from Cannon. There is absolutely no evidence of any unlawful agreement between Cannon and Storey before Cannon received the patent for this land. Storey states, without contradiction, that there was no such contract. He also states that while he did not know where Mr. Cannon was sleeping between May 1, 1909, and January 24, 1911, he did know that he did not sleep at his,

Story's place. At pages 92 and 93 of the transcript he testifies: "I did not have any knowledge during the time intervening between May 1, 1909, and January 24, 1911, that Mr. Cannon was making his home anywhere else excepting on his homestead. * * * So far as I know, his residence on that land was as continuous as the residence of the ordinary homesteader on his homestead."

This testimony of Mr. Storey's is not contradicted by any evidence in the case, and we therefore submit that the finding of the trial court that the defendants had proven the allegations of new matter set up in the answer is fully sustained by the evidence.

We therefore respectfully contend, that the government absolutely failed to make out a prima facie case of fraud, as against the defendant Cannon; that the defendant Storey conclusively proved that he was a bona fide purchaser for value, of the land involved herein; and that therefore, the findings and judgment of the trial court herein should be sustained.

Respectfully submitted,

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